

# **INSTRUCTIONS FOR COUNTY INSPECTORS**

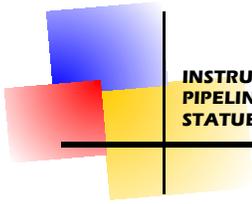
## **PIPELINE CONSTRUCTION PROJECTS**



**STATUTES, RULES AND RESPONSIBILITIES**

**IOWA UTILITIES BOARD  
350 MAPLE STREET  
DES MOINES, IOWA 50319-0069**

**NOVEMBER 2003**



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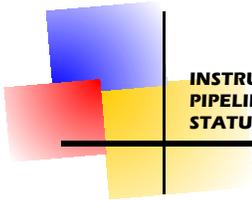
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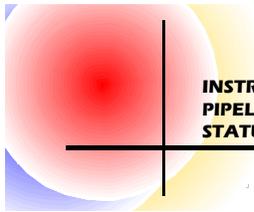
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## TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	2
THE STATUTE AND INSPECTOR RESPONSIBILITIES	4
199 IOWA ADMINISTRATIVE CODE CHAPTER 9	12
PIPELINE CONSTRUCTION SEQUENCE	29
SUGGESTED INSPECTION PROGRAM PRACTICES	33
IOWA CODE CHAPTER 479	APPENDIX I
IOWA CODE CHAPTER 479A	APPENDIX II
IOWA CODE CHAPTER 479B	APPENDIX III
IOWA ATTORNEY GENERAL'S OPINION #81-8-4(L)	APPENDIX IV
199 IOWA ADMINISTRATIVE CODE CHAPTER 9	APPENDIX V



## INTRODUCTION

This manual was prepared by the Iowa Utilities Board and is provided to comply with the provisions of Iowa Code Sections 479.29, 479A.14 and 479B.20 which require that "The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspector's responsibility to require construction conforming with the standards provided by this chapter." (Subsection 8 of all three law sections.)

This manual includes sections on the background of the program, the statute and inspector responsibilities, the standards to be used by inspectors, the sequence of a pipeline construction project, and a few suggested practices for the inspection program.

This manual is not intended to provide instruction in the organization of an inspection program or to familiarize inspectors with agricultural drainage methods, erosion control practices, soil characteristics, etc. It is expected that knowledge and ability in these areas will be a prerequisite for the hiring of inspectors.

This manual was prepared using the 2003 Iowa Code.

Any questions should be directed to Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069; Phone (515) 281-5546; Fax (515)-281-5329; or e-mailed to [don.stursma@iub.state.ia.us](mailto:don.stursma@iub.state.ia.us).

## BACKGROUND

There are approximately 12,000 miles of transmission pipeline in the State of Iowa dedicated to the transportation of such products as natural gas, liquefied gas products (propane, ethane, butane), fuels such as gasoline and fuel oil, crude oil, or anhydrous ammonia. Most of that distance is on private property where the pipeline was constructed under easement, attained either voluntarily or through eminent domain (condemnation). Pipeline construction requires excavation and other disturbances to the land and property along the pipeline route. In Iowa, where the soil is the prime natural resource, the state and its citizens have long been concerned that after construction the soil be returned as nearly as possible to its original productive condition and that existing agricultural improvements made to the land be repaired and restored.

The construction, operation and maintenance of pipelines has, for many years, been regulated by both the state and federal governments. Pipeline design and construction standards, the enforcement of which are the responsibility of either Federal or State inspectors, are set forth in the Code of Federal Regulations in 49 CFR Part 192 "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards," and 49 CFR Part 195 "Transportation of Hazardous Liquids by Pipeline." However, there are no federal standards for restoring agricultural lands disturbed by pipeline construction, although the Federal Energy Regulatory Commission (FERC) has some guidelines, and for major interstate natural gas projects land restoration may be considered if an Environmental Impact Statement is prepared.

Means to protect and restore private property and compensation for damages have traditionally been considered matters to be resolved between the landowner and the pipeline company and into which government should not intrude. However, as more and more pipelines were constructed questions were raised as to whether this provided, not only to individual landowners but to the interests of the State of Iowa and its citizenry, adequate protection for the soil resources of the State and its agricultural history.

In 1979, the 68th General Assembly enacted what is now Iowa Code Section 479.29, which first established the county inspector system for enforcing "standards for the protection of underground improvements during the construction of pipelines, to protect soil conservation and drainage structures from being permanently damaged by pipeline construction and for the restoration of agricultural lands after pipeline construction." The Utilities Board (then the Iowa State Commerce Commission) was directed to develop those standards. In 1981, the 69th General Assembly expanded that section to include additional authority and duties for the county inspectors.

In 1987, a court decision<sup>1</sup> found that the Iowa pipeline permit system was preempted by federal law and much of Chapter 479 could not be applied to federally regulated (interstate) natural gas pipelines. In 1988, the Iowa Legislature took those parts of Chapter 479 which were not preempted and placed them in a separate law, Iowa Code Chapter 479A. Land restoration was retained in the new law.

In 1995, the Iowa Legislature enacted a third law, Chapter 479B, to deal with hazardous liquid pipelines. This came about because of another court decision<sup>2</sup> which found certain safety-related provision of Chapter 479 could not be applied to interstate hazardous liquid pipelines, again due to federal preemption. Again, the new law provided for restoration of agricultural lands.

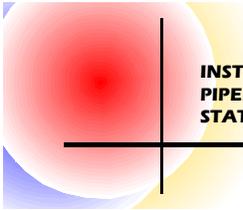
Because of these court and legislative actions, there are now three separate laws regulating pipelines in Iowa. They are Chapter 479, which applies to intrastate natural gas pipelines and underground storage (usually owned by utility companies or end users); Chapter 479A, which applies to interstate natural gas pipelines and underground storage; and Chapter 479B, which applies to hazardous liquid pipelines and underground storage. All three laws contain sections on inspection of pipeline construction and land restoration by the counties: Sections 479.29, 479A.14 and 479B.20. The language of the three sections is identical for most practical purposes.

In 1998 and 1999 two major interstate natural gas pipelines projects were constructed in Iowa. Concerns were raised that the laws and rules as they existed at that time did not offer sufficient protection for the land and did not address additional areas of concern to landowners, such as soil compaction. In 1999 all three laws were substantially amended to expand the oversight of and standards for land restoration during and after pipeline construction. The new legislation necessitated a complete rewrite of the Iowa regulations on land restoration. On January 10, 2001, after an extensive rulemaking proceeding, the current 199 IAC Chapter 9, "Restoration of Agricultural Lands During and After Pipeline Construction," was issued. The rules became effective on March 14, 2001. There have been subsequent rulemakings to correct minor errors in the rules but in all instances, no substantive changes were made.

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<sup>1</sup> **ANR Pipeline Company v. Iowa State Commerce Commission**, 828 F.2d 465 (8th Cir. 1987)

<sup>2</sup> **Kinley Corporation v. Iowa Utilities Board**, 999 F.2d 354 (8th Cir. 1993)



## THE STATUTE AND INSPECTOR RESPONSIBILITIES

The Iowa statutes which apply to county inspectors are Iowa Code Sections 479.29, 479A.14 and 479B.20. They establish the program and define inspector authority and responsibilities.

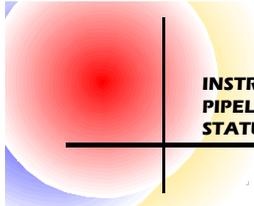
The statutes will be presented by subsection in the same order as they appear in the Code. Following each subsection is a brief discussion where considered necessary. Unless otherwise stated, where the law is quoted in this manual, the Iowa Code 479 language is used.

479.29	<u>Land Restoration</u>
479A.14	<u>Land restoration - standards - inspection.</u>
479B.20	<u>Land restoration standards.</u>

*Subsection 1. The board shall, pursuant to chapter 17A, adopt rules establishing standards for the restoration of agricultural lands during and after pipeline construction. In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rulemaking proceedings, petition under those provisions for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:*

- a. Topsoil separation and replacement.*
- b. Temporary and permanent repair to drain tile.*
- c. Removal of rocks and debris from the right-of-way.*
- d. Restoration of areas of soil compaction.*
- e. Restoration of terraces, waterways, and other erosion control structures.*
- f. Revegetation of untilled land.*
- g. Future installation of drain tile or soil conservation structures.*
- h. Restoration of land slope and contour.*
- i. Restoration of areas used for field entrances and temporary roads.*
- j. Construction in wet conditions.*
- k. Designation of a pipeline company point of contact for landowner inquiries or claims.*

This subsection (the title varies in different laws but the language is identical) directs the Utilities Board to adopt rules establishing standards for the restoration of agricultural lands



after pipeline construction, and specifies subject areas that must be addressed. These are the rules that will be used by the county inspectors. These rules are now a part of the Iowa Administrative Code (IAC) and are designated as Chapter 9 in Part 199 (Department of Commerce), or as 199 IAC Chapter 9. Iowa Code Chapter 17A, referenced in this section, is the Iowa Administrative Procedures Act, which establishes the procedures state agencies must follow in promulgating rules.

Because of the role played by counties, they are given more opportunity for input into these rules than is otherwise required by law. Counties may also petition the Board to have rules changed or added specifically for that county. A county cannot, lawfully by ordinance or other means, enforce standards of its own. This also applies to drainage districts. Attached as Appendix IV is an Iowa Attorney General's opinion which concludes that drainage districts cannot enforce their own standards during pipeline construction, as well as addressing several other issues pertaining to state and county authority to develop construction standards.

Where federal pipeline safety construction standards apply, there have also been several court cases in other states where a county or other local government unit tried to require a pipeline company to follow design or construction standards more stringent than those in the federal standards: in every such case the courts have held the county had no authority to take such actions.

The laws very specifically limit the Iowa land restoration requirements to agricultural land, including agricultural land located inside of corporate limits. Non-agricultural land is not subject to these rules.

*Subsection 2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A licensed professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be responsible for the inspection. A county board of supervisors may contract for the services of a licensed professional engineer for the purposes of the inspection. The reasonable costs of the inspection shall be borne by the pipeline company*

This is the section that makes the county responsible for enforcing the standards ordered by Subsection 1. Inspectors are hired and the inspection program administered through the county, but the pipeline company will reimburse the county for the reasonable expenses associated with the inspections.

The inspection work must be done by or under the supervision of a registered professional engineer (PE). The board of supervisors may assign this duty to the county engineer or may hire an outside engineer for this purpose. Inspectors need not be engineers if supervised by a PE. Be aware that the authority of the county inspector is limited to certain activities being performed during pipeline construction, not all aspects of the project.

It is suggested the expense rates that will be charged (mileage, meals, wages, etc.) be disclosed to the pipeline company before construction begins to prevent misunderstandings.

The Utilities Board will also frequently have inspectors on the site of natural gas pipeline construction. Their authority derives from another section of Chapter 479 or 479A, Section 4, and from state agreements with the Federal Department of Transportation. Board inspectors are empowered to inspect for unsafe or dangerous conditions and to insure compliance with federal and state pipeline construction criteria. At this time Iowa does not have statutory authority to inspect the construction of hazardous liquid pipelines, but could possibly do so under federal authority under special arrangement with the U.S. Department of Transportation. The law does not give the state inspectors authority over topsoiling, tile repair, etc.; that authority is reserved to the counties.

*Subsection 3 If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration or line location executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.*

This section describes how the county inspector will respond to an apparent violation of land restoration standards. The nature and location of the violation should be carefully documented, including photographs or video if possible. A record should also be made of the pipeline company and/or contractor personnel to whom oral or written notice was given. This information is essential not only to support the immediate action taken, but would be vital if the situation leads to an enforcement proceeding under Subsection 5.

Notice must be given to both the contractor and the pipeline company. While the contractor needs to be aware of the violation, it is the pipeline company that is legally responsible for the manner of construction.

Nonstandard land restoration practices are allowed if agreed to in writing by the landowner. The pipeline company must provide the county inspector with copies of any such agreements. See Iowa Administrative Code Section 199-9.6 in Appendix V.

*Subsection 4. An inspector shall adequately inspect underground improvements altered during construction of pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. **An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling.** The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any*

*schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.*

The bolded portion obligates the county inspector to be present at certain times and places during construction. The Board's land restoration rules identify those areas where the presence of a county inspector is required. It also requires the pipeline company and contractor keep the inspector informed of what work is being done where. However, if the county inspector has been properly notified, but does not appear at the work site, the law allows the work to proceed.

The company may have written specifications describing the methods and procedures which will be used during construction. Prior to the start of construction, the county should review the specifications pertaining to soil removal, tile repair, etc. to become familiar with the procedures that will be used.

The burial depth of pipelines sometimes becomes an issue during construction. For interstate natural gas and hazardous liquid pipelines the federal standards normally require a minimum cover of 30 inches over the top of the pipe, although greater depths may be used due to company practice, design considerations, agreements with landowners, or to avoid known tile lines. For intrastate natural gas pipelines in tilled agricultural land, a minimum cover of 48 inches is required by rule.<sup>3</sup> County inspectors do not have jurisdiction over the depth to which the pipeline is buried, with one possible exception. The exception would occur when the tile could not be repaired under Chapter 9 standards because the pipeline would intercept the tile line. This should be immediately brought to the attention of the company and/or contractor.

*Subsection 5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan, or with an independent agreement on land restoration or line location executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties pursuant to section 479.31.*

This is the enforcement section of the law. The actual enforcement or civil penalty order is issued by the Iowa Utilities Board (the "board" in the law) but the case must be brought to the Utilities Board by the county. In essence, the county "prosecutes" the case before the Board. The case will rely on the evidence presented by the county. This is why careful documentation of alleged violations by the county inspector, as discussed above, is essential if an enforcement action is to be taken.

The potential civil penalty is not the same for each law. See Iowa Code 479.31, 479A.16, or 479B.21, depending on the type of pipeline, for further information.

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<sup>3</sup> IOWA ADMIN. CODE Chapter 199-10 (Section 10.12(3))

*Subsection 6. The pipeline company shall allow landowners and the inspector to view the proposed center line of the pipeline prior to commencing trenching operations to insure that construction takes place in its proper location.*

The precise location of the pipeline route may have been extensively negotiated between the landowner and the pipeline company, and may be the subject of a special agreement. This provision allows the landowner to see where the pipeline will go, so any surprises or outdated information can be dealt with before actual construction begins. It also allows the county inspector to verify that the marked location is consistent with the information provided to the county about the route. It is also a good opportunity to examine the property for any unusual features that may warrant advance discussions with the pipeline company or particular attention during construction.

*Subsection 7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted pursuant to this chapter, the land restoration plan, or the terms of an independent agreement with the pipeline company regarding land restoration or line location executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.*

This subsection gives the inspector stop-work authority not only over compliance with the land restoration regulations, but also over the terms of a pipeline company land restoration plan and the terms of special agreements between the pipeline company and landowners. This will require that the county inspector be aware of the limits of the right-of-way and any special agreements between the landowner and pipeline company.

Stop-work does not mean shutting down the entire construction project, but that specific acts (such as backfilling of a tile repair) can be postponed until the problem can be brought to the attention of the proper pipeline company representative. If the company allows work to proceed in a manner that the inspector feels does not comply with the required standards or agreements, the matter should promptly be brought to the attention of the county board of supervisors for a decision on whether an enforcement action by the Utilities Board will be sought.

Contractors and/or pipeline company officials will often voluntarily stop work until disputes are resolved once they are aware of a problem. However, inspectors should be prepared to resist possible demands by persons who, for whatever reasons, are unhappy about the project.

*Subsection 8. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspectors' responsibility to require construction conforming with the standards provided by this chapter.*

As was explained in the introduction, this manual provides that instruction.

*Subsection 9. (479, 479B) Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met. The petitioners shall provide copies of the plan to all landowners of property that will be disturbed by the construction.*

*Subsection 9. (479A) Prior to the initiation of construction, the pipeline company shall file a written land restoration plan with the board describing the methods and procedures by which compliance with this section and the standards adopted under this section will be achieved. The board shall review this plan to insure that the requirements of this section and rules adopted pursuant to this section are met. After board review, the pipeline company shall provide copies of the plan to all landowners of property that will be disturbed by the construction. The requirements of this subsection may be waived by the board to the extent an environmental impact statement addressing the land restoration subjects in subsection 1 was prepared by the federal energy regulatory commission.*

The land restoration requirements of 199 IAC Chapter 9 apply to almost any excavation associated with a pipeline (see the definition of pipeline construction in Rule 9.1(3)f.) Pipeline projects large enough to require state or federal approval for construction must also prepare and file a land restoration plan specific to the project. These plans are subject to review by the Utilities Board. This is an area where the laws are different depending on the type of pipeline. If it is a pipeline requiring a pipeline permit from the Utilities Board, the plan is reviewed as part of the permit proceeding. If it is an interstate natural gas pipeline that obtains construction authorization from the Federal Energy Regulatory Commission (FERC), the Board reviews it in an individual proceeding.

For major interstate natural gas pipeline projects that require a certificate from FERC authorizing construction, FERC may prepare an Environmental Impact Statement (EIS). The EIS may address land restoration issues, and the certificate issued by the FERC may contain terms and conditions related to land restoration. To avoid duplication of effort and possible conflicts, the law allows the Utilities Board to waive otherwise applicable requirements related to the preparation and content of a Land Restoration Plan.

When a Land Restoration Plan is prepared for a project, the county inspector examines construction for compliance with this plan.

*Subsection 10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted pursuant to this section, or in the land restoration plan, if the alternative provisions are contained in agreements independently executed by the pipeline company and landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.*

The law allows landowners to negotiate their own individual, independent agreements with the pipeline company on land restoration on their property. The terms of these agreements would supercede the Iowa regulations and the Land Restoration Plan, so long as these terms are reasonably consistent with the Iowa regulations. Examples of issues that might be addressed in a separate agreement would include deeper topsoil stripping, specified locations for disposal of rocks, or a specific method of tile repair. Iowa Code Chapters 479, 479A and 479B give the county inspector the authority to enforce company-landowner agreements in lieu of the 199 IAC Chapter 9 standards where appropriate.

Written agreements may come in two forms:

1. The landowner, in the terms of his easement or other written agreement with the company reached prior to construction, has obtained or agreed to methods and standards different from those of 199 IAC Chapter 9, or
2. The landowner, during construction and after examining the work being done, accepts that work even though it is different from the 199 IAC Chapter 9 standards. In some cases the landowner may verbally request the contractor do things in a certain manner not consistent with 199 IAC Chapter 9.

In the first case above the inspector must verify that any departures from normal criteria have been agreed to by the landowner before accepting the work. In the second case, the inspector must verify that the landowner has signed a release or waiver with the pipeline company before accepting non-standard work.

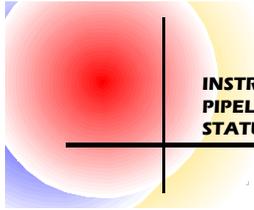
The county inspector is responsible for inspecting for pipeline company compliance with these agreements. These agreements may be part of the easement or they may be a separate document, but they *must* be in writing. The county inspector cannot be responsible for any alleged oral agreements.

*Subsection 11. For purposes of this section, "construction" includes the removal of a previously constructed pipeline.*

Pipeline companies sometimes elect to remove retired pipelines. Because the excavation and traffic associated with removal would have much the same impact on the land as installation of a new pipeline, the laws specify that pipeline removal is subject to Iowa land restoration standards.

*Subsection 10. (479, 479B) The requirements of this section shall apply only to pipeline construction projects commenced on or after June 1, 1999.*

Two of the laws specify the effective date of the new land restoration requirements. The third law, 479A, does not. It originally contained the following provision, designed to prevent application of new standards to an interstate pipeline construction project that had received

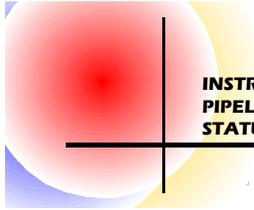


regulatory approval to proceed, but whose construction date was uncertain at the time the legislation was being debated:

*479A.14(12) The requirements of this section shall not apply to pipeline projects that have received a certificate from the federal energy regulatory commission prior to June 1, 1999.*

This provision was repealed by the Legislature in 2000 after arguments were raised that it exempted interstate natural gas pipelines with certificates issued at any time prior to 1999 (essentially all interstate gas pipelines) from future application of Iowa land restoration standards, including repairs or removal. However, the original legislation mandating the requirements set forth in Iowa Code section 479B.14 apply to any interstate natural gas pipeline construction, subsequently passed with an effective date of June 1, 1999.

Attached to this manual are complete copies of Iowa Code Chapters 479 (Appendix I), 479A (Appendix II) and 479B (Appendix III). These are provided for your information and to show how the law sections which affect you fit into the complete law. The damage claim provisions of Chapter 479, 479A and 479B may be of particular interest to you as you may be questioned about damages in the field, but remember that inspectors have no authority or responsibility in determining damages or justification for claims. The Iowa Utilities Board has no authority in this area either. If persons seek interpretation of the law sections on damages, it is suggested you refer them to legal counsel.



## 199 IOWA ADMINISTRATIVE CODE CHAPTER 9

199 Iowa Administrative Code Chapter 9 contains the technical standards adopted by the Utilities Board as required by Iowa Code Sections 479.29, 479A.14 and 479B.20. The county inspectors are responsible for enforcing these standards. A copy of 199 IAC Chapter 9 is attached as Appendix V.

The rules were drafted to be as self-explanatory and stand-alone as possible. However, the following comments will provide occasional clarifications and explanations of these regulations.

### **Rule 199-9.1 (479, 479A, 479B) General Information**

**Subrule 199-9.1(1) Authority.** This section lays out the statutory authority of the Utilities Board to adopt these rules, and also notes several circumstances in which they do not apply.

**Subrule 199-9.1(2) Purpose.** States the purpose of the rules, and notes that they are the minimum standards for projects not requiring a project-specific land restoration plan.

**Subrule 199-9.1(3) Definitions.** The county inspector should be familiar with the definitions of this subrule; in particular:

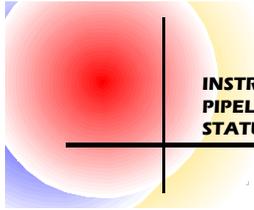
"Agricultural land," which indicates when these rules apply. In this definition land that is fallow, in a set-aside program, or in hay or pasture would be agricultural land if it is tillable.

"Proper notice," which describes how the pipeline company or contractor must keep the county inspector informed. Because the inspector is required by law to be at certain places at certain times, proper arrangements for receipt of notice is essential. The pipeline company may request the county designate a person to receive notice of construction schedules or plans.

### **Rule 199-9.2 (479, 479A, 479B) Filing of land restoration plans.**

### **Rule 199-9.3 (479, 479A, 479B) Procedure for review of plan.**

These rules define the content and procedure for filing and review of land restoration plans, when required. No part of these rules places duties on county inspectors. However, the county inspector should be aware that there may be a land restoration plan in addition to these rules that the county would be responsible for administering.



**Subrule 9.3(1)** This rule applies to any pipeline construction project by an intrastate natural gas pipeline, or by any hazardous liquid pipeline, that requires a permit from the Utilities Board. This includes both new permits and amendments to existing permits that propose to add additional facilities. The petition for permit must include a proposed land restoration plan. The plan will be considered along with all other issues in the proceeding. Board pipeline permit proceedings include published notice in the affected area, opportunity to file objections, and a public hearing.

**9.3(2)** This rule requires interstate natural gas companies to file a land restoration plan for Board review for any pipeline construction project that requires Federal Energy Regulatory Commission (FERC) approval, and sets filing requirements. The pipeline company may request waivers to avoid duplication of effort if the federal process requires an environmental impact statement or a similar but less comprehensive environmental assessment.

**Subrule 9.3(3)** requires that the pipeline company provide copies of the approved plan to the board of supervisors and county engineer of affected counties, and to affected landowners.

#### **Rule 199-9.4 (479, 479A, 479B) Restoration of Agricultural Lands**

The primary duty of the county inspector is to monitor pipeline construction for compliance with the requirements of this subrule, or the parallel requirements of a land restoration plan or separate agreement.

Pipeline construction will take place within a strip of land, the width of which is specified in the easement. The limits of the construction right-of-way will ordinarily be defined by flags or other markers.

The easement may consist of two parts - see Figure 1. The "permanent" easement is the width for which the pipeline company has obtained permanent rights to occupy with a pipeline and to gain access to it if needed, and on which the easement will normally prohibit the placement of buildings or other obstacles. The "temporary" easement is an additional width that will be used during construction, but over which the company has not purchased permanent rights. The distinction is ordinarily of little significance during actual construction.

The trench for installation of the pipeline will be dug within the right-of-way; not necessarily in the center. The right-of-way is divided into two sides. The "spoil" side of the trench is where the stripped topsoil and excavated subsoil will be stored during construction. The "working"

side of the trench provides access to the trench and is where the pipeline will be assembled prior to lowering into the trench. See Figure 1 on Page 12. In some cases excess dirt may also be stored at the edges of the working right-of-way.

The county inspector is expected to monitor all aspects of construction covered by these rules, but in several places the laws (479.29(4), 479A.14(4), and 479B(4)) and rules place specific duties upon the county inspector:

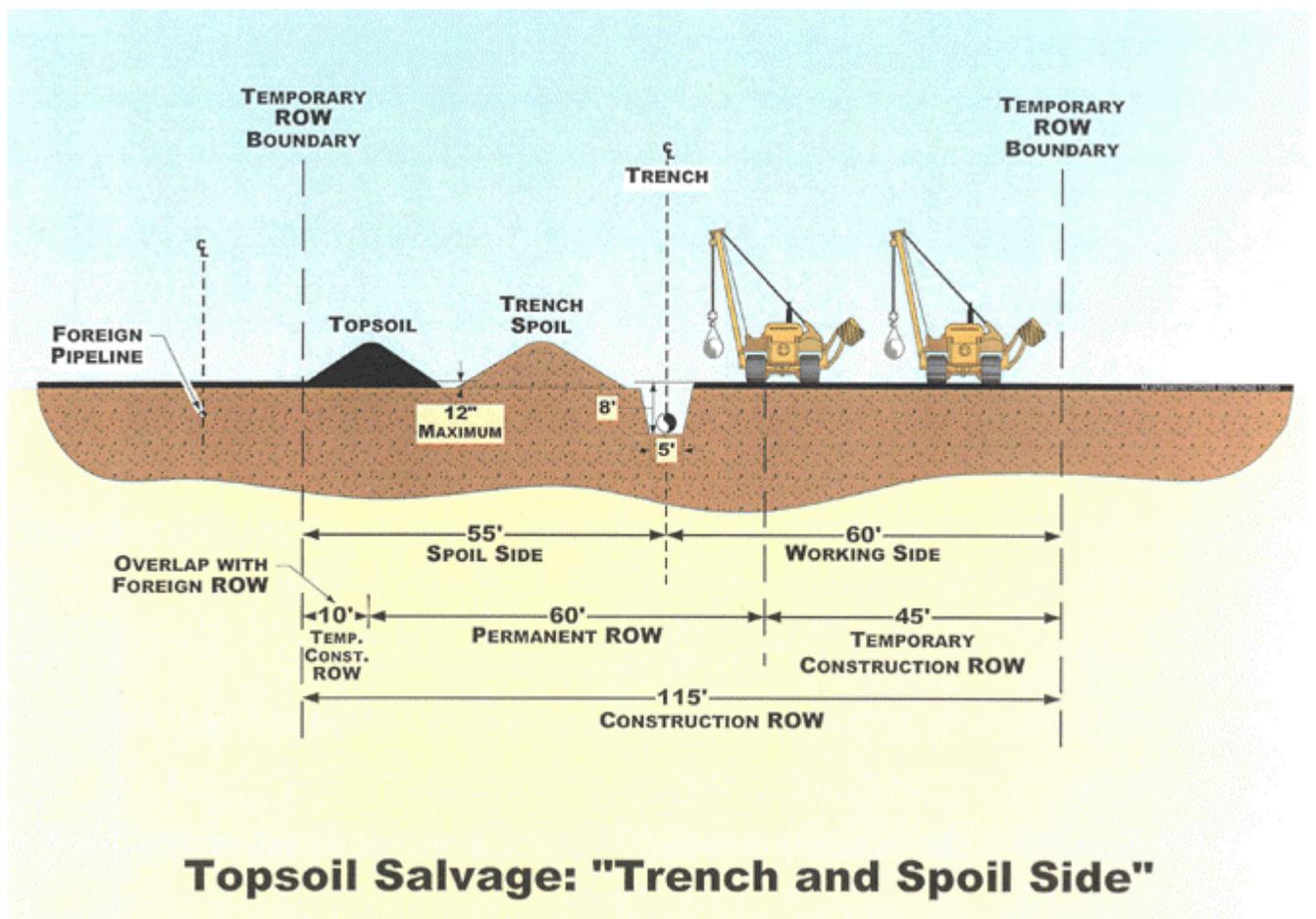
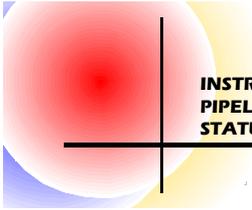


Figure 1. The above drawing, from a 1999 36" pipeline construction project, shows application of right-of-way terms, proper soil storage, and how topsoil stripping from the subsoil storage area is to be accomplished. The dimensions shown will vary from project to project.



**Subrule 9.4(2)c Marking.** The flags marking the location of the ends of cut drain tile lines may not be removed until after the permanent tile repair has been approved by the county inspector.

In addition, all three laws require the county inspector be present when the trench is opened. This implies the county inspector has responsibility for assuring that cut drain tile ends are marked.

**Subrule 9.4(2)e Inspection.** All permanent drain tile repairs must be inspected by the county inspector.

**Subrule 9.4(2)f Backfilling.** The county inspector must monitor the backfilling of the trench at all locations containing drain tile to insure the tile is not damaged during the placement of the backfill material.

**Subrule 9.4(5) Restoration of terraces, waterways, and other erosion control structures.** The county inspector must inspect all repairs to these structures.

**Subrule 9.4(10) Construction in wet conditions.** Alternative methods proposed by the pipeline company to prevent damage in soft soils must be acceptable to the county inspector.

During the rulemaking process, the pipeline companies were adamant about preserving the right given them in the law to proceed with construction if the county inspector failed to be present after proper notice. This exception is noted in several places in the rules. This reinforces the need for the county inspector to be on site at the times the law requires.

#### **9.4(1) Topsoil removal and replacement**

*a. Removal.* Topsoil must be removed from the trench area and that part of the spoil side of the right-of-way where the subsoil excavated from the trench will be stockpiled.

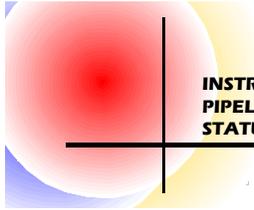


Photo # 1. The right-of-way after topsoiling. In this instance topsoil was stripped from the entire width of the right-of-way. Separate agreements between landowners and pipeline companies will often contain special provisions for topsoil stripping and storage.

The topsoil stripping is normally done with bulldozers or graders. If all the topsoil is removed (up to 12"), it is probably inevitable that some subsoil will be scraped up with it, and some topsoil will be left. The topsoil/subsoil interface is not necessarily regular or even, and where irregular it may be impossible not to scrape off high spots of subsoil or leave pockets of topsoil. Even if topsoil depth measurements are taken, stripping will largely be governed by the eye of the equipment operator watching for a change in soil color. This is acceptable if the amount of subsoil removed with the topsoil is minimal and it appears the equipment operators are using reasonable care.

The rule provides that if requested by the landowner, the pipeline company must measure topsoil depth at selected locations before and after construction. The intent is to allow verification that the topsoil was properly restored. However, care must be taken in taking and interpreting the results.

- The rules do not attempt to specify how many measuring points should be used or where they should be located. This is strictly a matter for negotiation between the



landowner and the company, and in which the county inspector has no authority to become involved.

- Because topsoil depth may vary, measurements taken at one location should not be presumed applicable to other areas.
- The locations where topsoil depth measurements are taken must be re-locatable after construction. This does not necessarily mean they need to be surveyed in, but if in an area that will be disturbed by construction they need to be referenced to stakes or landmarks outside of the disturbed areas.
- Even if topsoil was carefully and properly replaced, differences in soil moisture content and the degree of compaction may cause the topsoil depth to vary from previous measurements.

It is suggested such measurements, if taken, be used primarily as a guide to whether reasonable efforts are being made to restore the original topsoil depth. Exact duplication of original depth at each measurement point should not be expected.

Under these rules topsoil is stored on topsoil and subsoil on top of subsoil. See Figure 1 on Page 13. The reason for removing topsoil from the subsoil storage area is to prevent mixing. When topsoil is placed on subsoil, there have been objections that after trench backfilling subsoil was left on top of the topsoil, or if all subsoil was removed too much topsoil was scraped up with it. If the topsoil is more than 12" deep in the storage area, subsoil will be placed on deeper topsoil, but at least the top layer of topsoil after construction will be clean.

Topsoil must also be stripped at any other excavation (besides the trench). There may also be instances where the topsoil is stripped from the working side of the right-of-way also, such as at landowner request or to preclude soil mixing in wet conditions.

During the rulemaking, landowners strongly objected to use of their topsoil to make field entrances or roadways, contending it may never be returned to where it was taken, and may be contaminated with gravel or other foreign material. Such use of topsoil requires the written consent of the landowner. In the alternative, the pipeline company may use subsoil or bring in gravel or other fill for field entrances.

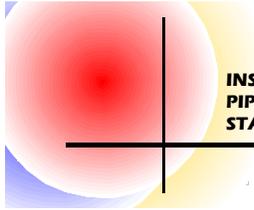


Photo # 2. Topsoil was used to build these field entrances and some has been carried onto the roadway by construction equipment.



Photo # 3. A gravel and filter fabric temporary field entrance.

*b. Soil storage.* The stripping and trench excavation process should result in twin windrows or piles of topsoil and subsoil. The windrows or piles must not be in contact, or mixing will occur. See Figure 1 and the photo below.

*c. Topsoil removal not required.* Topsoil removal is not required if the pipeline will be installed using a method that does not require opening a trench or disturbance of the surface, such as drilling or boring. With landowner consent topsoiling may also be waived by the landowner on smaller projects where the trench would only be 18" wide or less. This rule allows landowners to decide if they feel soil mixing in a narrow strip is preferable and would have less impact on their land than topsoil stripping and replacement over a wider area.

*d. Backfilling.* Care must be taken to avoid subsoil and topsoil mixing when the windrows or piles are removed to backfill the trench and replace the topsoil. The topsoil needs to be spread evenly and smoothly. Topsoil replacement should be done when the soil conditions are dry enough for the soil to be readily worked.



Photo # 4. Separate windrows of stripped topsoil and trench subsoil.

**9.4(2) Temporary and permanent drain tile repair.**

*a. Pipeline clearance from drain tile.* Permanent tile repair, which occurs after the pipeline is in place in the trench, must allow 12" clearance between the tile and pipeline. This is to allow work space in the event of future work on either line.

*b. Temporary repair.* The purpose of temporary tile repair is not to keep water out of the trench; for pipeline companies this is a common construction condition of little importance. It is rather intended to maintain the original drainage patterns on adjacent lands. Even with tile repairs, however, drainage from adjacent land can be a problem in wet weather because the spoil piles block surface drainage.

Flowing tile lines must be temporarily repaired as soon as practicable. There is no definition of practicable but it can reasonably be expected to mean repairs will be within hours, not days. If there is any significant delay care must be taken that no problems develop at the open ends, such as mud washing in. The temporary repairs must be maintained in good condition for as long as they are needed.

For dry tile lines temporary repairs are required only if the trench is open more than 10 days. And in some cases tile lines may be crossed at an angle that makes temporary repair impractical. But precautions must be taken to prevent damage at the open ends. Both the upstream and downstream ends must be protected from debris or animal entry, and the downstream end must be protected from mud and silt entry if the trench fills with water.



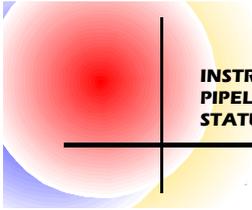
Photo # 5. Temporary tile repairs can be seen crossing the open pipeline trench.



Photo # 6. This photos shows a closeup of the temporary tile repair; PVC pipe with a wooden crossbrace.



Photo # 7. In this photo a temporary tile repair has failed and must be repaired.



*c. Marking.* If the ends of cut drain tile are not promptly marked, they can easily be lost and the tile not later repaired. Ideally a worker will follow the trencher or backhoe as the trench is opened and flag the ends as soon as the machine is passed.

It is recommended that, in addition to watching the trench bank for tile ends, the inspector also watch the discharge conveyor from the trenching machine, and from backhoe buckets as they are emptied. The presence of broken tile in the soil being excavated may give evidence of tile lines that might otherwise go unnoticed.

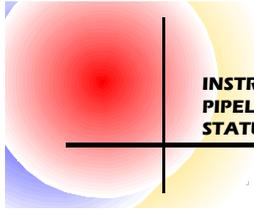
As previously noted, the law requires the county inspector to be present when the trench is opened, and assurance that tile ends are marked is a primary reason for this requirement. The markers must be maintained until the permanent tile repair has been approved and accepted by the county inspector.

*d. Permanent repairs.* The trench must remain open at each tile location until the permanent repair is completed and accepted. It is not permissible to backfill the trench and re-excavate to repair tile later - the tile location is too easily lost.

Obviously, tile used for repairs must be in good condition and unobstructed. In some cases the replacement tile may have to be larger than the original tile to maintain comparable flow capacity, such as replacing clay tile with a section of corrugated plastic tile.

Prior to permanent tile repair a probe should be run up the tile to check for obstructions or tile crushed by construction equipment. If found, permanent repair will include digging back and unblocking or replacing that tile also.

A key to permanent tile repair is preventing loss of grade and/or alignment as the soil settles in the trench area. Pipeline trench backfill is normally placed loose and allowed to settle naturally. In narrower trenches a piece of channel iron or metal pipe, securely imbedded in the trench wall, may provide sufficient rigidity. In wide trenches sandbag walls or columns may be needed to prevent excessive deflection. See Drawing No. IUB PL-1 at the end of 199 IAC Chapter for instructions on tile support and on how to repair tile lines crossing the trench at a sharp angle. If the pipeline company prepared a land restoration plan, it may contain additional instructions.



*f. Backfilling.* In addition to making sure the subsoil and topsoil are properly replaced, the county inspector must monitor to insure that permanent tile repairs are not damaged when backfill is pushed into the trench. The county inspector should not give final approval to a tile repair unless reasonably satisfied that the tile repair was not damaged when the trench was backfilled.

*g. Subsurface drainage.* This rule directs the pipeline company to correct drainage problems that become apparent after completion of construction, provided the problem can reasonably be attributed to the pipeline construction. There is no time limit on this rule.

**9.4(3) Removal of rocks and debris from the right-of-way.**

*a. Removal.* Large rocks and construction debris can interfere with soil cultivation and damage tillage equipment. Smaller rocks or pieces of debris on the soil surface can be picked up by, and cause damage to, harvesting equipment. After construction all foreign materials should be picked up, and rock conditions can be no worse than the native condition of adjacent areas.

After construction and topsoil replacement, the amount of rock on the surface cannot exceed that of adjacent undisturbed soil. Excess rock over 3" in diameter must be picked up.

The source of excess rock, especially large rock, is usually in the trench and below the usual cultivation depth. Careful subsoil replacement will help minimize rock issues, but to prevent damage to tillage equipment the top 24" of the trench area must not contain excess rock. In some areas this may require additional soil segregation and/or rock removal.

Because rocks may roll off of spoil piles, or fall from trucks while being hauled away, access roads and areas adjacent to the right-of-way must also be examined.

*b. Disposal.* Locations for disposal of excess rock or debris is a common basis for a "separate agreement" between pipeline companies and landowners. If rock is observed being dumped off the right-of-way the existence of an agreement should be verified.

Cleanup must include removal or treatment of any soil contaminated by petroleum products or chemicals.

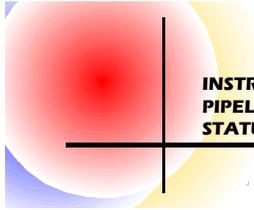


Photo # 8. This photo shows both soil compaction by heavy equipment and construction debris. The wooden "skids" used for pipe support could damage farm equipment and must all be picked up.

**9.4(4)** *Restoration after soil compaction and rutting.*

*a. Agricultural restoration.* Compaction of the land by heavy pipeline construction equipment was one of the landowner concerns that led to the 1999 revisions to Iowa law. The photo above may provide insight into why compaction occurs. The rule sets minimum standards for deep tilling the land after construction to alleviate compaction.

When deep tillage is being performed, the inspector should examine the type of equipment in use and the type of soil movement it causes. Ripping or scarifying equipment designed for non-agricultural uses, such as to loosen soil for earthmoving projects, may cause vertical soil movement and pull up subsoil into the topsoil range. If the ripping equipment is observed bringing subsoil to the surface, the pipeline company needs to be immediately informed.



Another means of alleviating compaction would be to plant the effected area in a perennial plant with deep tap roots, such as alfalfa, for at least two years. This practice may be more effective than tillage at removing deep compaction. This option is not in the rules because the laws do not apply to land use decisions made by the landowner after construction.

*b. Rutted land restoration.* Rutted land is to be graded and restored as nearly as practical to preconstruction condition. If the rutting is in a location from which topsoil was stripped, this grading must be done before the topsoil is replaced.

**9.4(5) Restoration of waterways, terraces, and other erosion control structures.**

Such structures must be restored to their original condition, including repair of any disturbed tile lines, culverts or flumes, and reseeded if necessary. Embankments may be slightly overfilled to allow for settlement. This restoration must be approved by the county inspector.

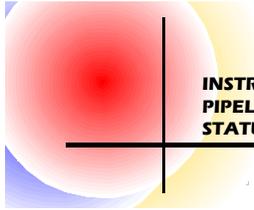
**9.4(6) Revegetation of untilled land.**

*a. Crop production.* Following deep tillage and topsoil replacement, agricultural land that is not in row crop land use at the time of construction, such as hay ground or set-aside land, must be reseeded. The seed mix used must be equal or comparable to the original vegetation unless otherwise requested by the landowner. A cover crop must be used where appropriate. However, reseeded may not be required if the land will be row cropped the following year - see 9.4(6)b.

*b. Delayed crop production.* The assumption is that row crops will be planted following construction if enough growing season remains. If it is too late to plant a commercial crop, a cover crop must be planted. If construction is completed too late in the fall for a cover crop to become established, this step may be omitted if the land will be used for commercial crop production the following year. However, in that case the landowner may request ground cover be laid.

**9.4(7) Future installation of drain tile or soil conservation structures.**

For both future drain tile and soil conservation structures, if the landowner has demonstrable plans the pipeline company must install the pipeline at a depth that will not interfere with these plans. The landowner must notify the pipeline company in writing and must have some kind of a plan drawn up that will allow the pipeline company to determine the location where adjustments must be made. While the county inspector has no direct role in this matter, if information on this is included in special agreements or other information provided to the county inspector the adequacy of the pipeline depth should be verified during construction.



**9.4(8)** *Restoration of land slope and contour.*

Any area disturbed by construction must be regraded to its original slope and contour, unless a written agreement specifies otherwise. However, the trench location may be "crowned," or higher, to allow for settlement of the backfill. If the crown interferes with surface drainage, or if erosion causes formation of rills or channels or heavy sedimentation, the pipeline company may have to return at a later date to regrade the area. In some cases temporary structural erosion control measures or mulching may be needed if the erosion or erosion potential is severe.

**9.4(9)** *Restoration of areas used for field entrances and temporary roads.*

If the field entrances or roads are to be removed, the area must be restored as nearly as possible to its original condition, including grading and deep tillage. If by agreement they are to be left in place, they must be left in serviceable condition.

**9.4(10)** *Construction in wet conditions.*

This will be one of the tougher areas to administer in practice. It was of great concern to landowners during the rulemaking, but pipeline companies may be reluctant to stop work.

On large construction projects, in soggy areas or if there has been a lot of rain, the heavy equipment used for pipeline construction can cause deep rutting. This rutting can result in topsoil and subsoil mixing (recall that the working side of the right-of-way does not ordinarily have topsoil removed), and can crush or otherwise damage tile lines.

The rule specifies several ways the pipeline company can continue working if the soil is soft. Methods other than topsoil removal or matting must be accepted by the county inspector. If the topsoil is stripped the same standards apply as with removal from the trench and subsoil storage area. If deep rutting does occur, it may be advisable to replace drain tile that crosses the traveled area.



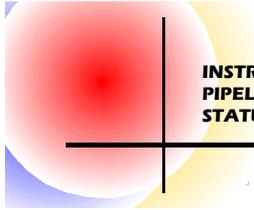
Photo # 9. Wet topsoil being stripped from the working side of the right-of-way at landowner request. Topsoil and subsoil were becoming mixed by the passage of construction equipment after the ground was softened by heavy rains.

**199-9.5 (479, 479A, 479B) Designation of a pipeline company point of contact for landowner inquiries or claims.**

The pipeline company must give landowners a name, toll-free telephone number (800 or collect), and an address for inquiries or claims. The county inspector has no role in damage claims, but may want to obtain this information for other inquiries or to pass on to affected persons.

**199-9.6 (479, 479A, 479B) Separate agreements.**

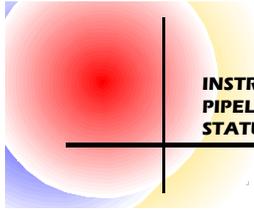
As is more fully discussed in the section on the law, landowners may negotiate separate individual agreements with the pipeline company. These agreements may contain terms, conditions, and construction requirements that differ from these rules or from a land restoration plan. Although the agreement could conceivably be less stringent than these rules (experience is that landowners usually negotiate more stringent terms), this is not



automatically prohibited provided there are reasonable provisions for restoring the land. If the county inspector feels the agreement provides inadequate protection for the land, the landowner should be consulted to insure that they understand what the agreement states.

**199-9.7 (479, 479A, 479B) Enforcement.**

As is more fully discussed in the section on the law, enforcement cases are brought before the Iowa Utilities Board, and the county is responsible for investigation of the situation and the prosecution of the case before the Utilities Board. If it appears such action may be warranted, the legal counsel for the county should be consulted for advice on the nature of the evidence that should be obtained.



## PIPELINE CONSTRUCTION SEQUENCE

The following is a typical sequence of events during a pipeline construction project. The operations which should be monitored by the county inspector are indicated by asterisks. Two asterisks indicate operations where an inspector is required by law to be present while the work is in progress.

1. Right-of Way Staking.

Right-of-way limits are staked prior to clearing. All work will take place between those limits.

The law requires that the company allow the landowner and inspector to examine the pipeline route after the pipe centerline is staked prior to trenching. This is to insure that the pipeline will be built at its proper location. It would be desirable to examine the route at this point since any problems would be easier to correct at this time.

\*2. Clearing and Grading.

The ROW is cleared of all crops, trees, shrubs, etc. Fences will be cut and temporary fencing placed. Some gradifg of high spots may be done to minimize overbends in the line, or steep sideslopes may be leveled. When this occurs, the topsoil should be removed and stockpiled prior to the grading.

\*3. Centerline Staking.

Route centerline is staked along cleared ROW. The trench will be dug and the pipeline placed on the line as staked. At this time it should be verified that the route is correctly marked, especially on tracts where the landowner had made special arrangements with the company regarding the route location.

\*4. Road Bores.

Road boring would normally begin next. Road boring is drilling a tunnel through the embankment through which the pipe will be placed. (Only in unusual circumstances would trenching through a public road be permitted.) The holes are opened with backhoes on each side of the road. Topsoil must be removed and stockpiled before the digging begins. Existing tile lines may be cut during the digging and these should be marked and screened. Railroad crossings will also be bored; stream crossings are also often bored. The topsoil and tile requirements apply.

At this point, the inspector may be assigned additional duties by the county to prevent damage to county roads during construction.

5. Pipe Stringing.

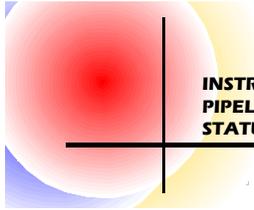
Lengths of pipe are strung along the route. The pipe will normally be delivered by trucks traveling on the ROW. Pipe typically comes in 40 ft. lengths but may be double-jointed to 80 ft. in the pipe receiving yard before delivery to the work site. If the ground is muddy, the semi trailers carrying the pipe may be pulled in by bulldozer. The trailer wheels can be the cause of substantial rutting where the ground is soft. The rules on working in wet conditions apply.



Photo # 10. A specialized pipe trailer with flotation tires for minimizing compaction and rutting. On most projects, however, pipe delivery will probably be by flatbed truck trailer.

\*\*6. Topsoil Removal and Stockpiling.

Topsoiling operations may precede the stringing. The inspector must insure that the proper amount of topsoil is being removed and being preserved in a manner to prevent its mixing with the subsoil when the subsequent trenching operation moves through the area.



**\*\*7.**     Trenching.

The pipeline ditch is opened to full depth normally by a wheel or ladder-type trencher. The spoil is conveyed to the non-working side of the ROW. The trenching machine usually will not dig the bend areas: Backhoes are used for this. Topsoiling should already be done. If not, it must be done prior to digging the trench. The inspector should insure the topsoil and subsoil are not mixed during this operation and that any tile lines cut are noted and marked.

**\*8.**     Tile Marking and Temporary Repair.

The cut tile lines should be marked with a lath and ribbon, or some other easily observable marker placed in the spoil bank. Marking should follow close behind trench excavation. Care should be taken to locate markers where the chance of disturbance is minimized, and a written record kept of all tile lines found. Where necessary, the cut lines should be temporarily repaired. In any event, open ends must be screened.

**9.**     Pipe Bending and Welding.

The pipeline is bent to conform with the terrain and to make the horizontal bends. The pipe lengths are then joined by welding. The size of the pipe dictates the number of welders and welding passes.

**10.**    Pipe Lowering.

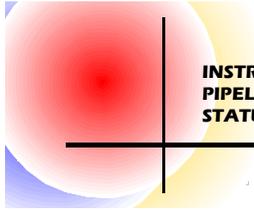
The welded pipe is coated and wrapped for corrosion control and lowered into the ditch. The temporarily repaired tile lines will be torn out to allow the pipe to be lowered into the ditch. It may be necessary to have temporary repairs replaced until the tile is permanently repaired if delays are anticipated.

**\*11.**    Permanent Tile Repair.

Tile lines must be repaired permanently before the ditch is backfilled. Often backfilling follows closely behind the pipe as it is lowered, ahead of the tile repair crew. When this is done the inspector should make sure the trench is left open at the tile lines until permanent repairs are made.

**\*\*12.**   Backfilling.

Tile lines are permanently repaired before the ditch is backfilled. During backfilling, the stockpiled subsoil is placed first and the topsoil placed on top. The inspector must insure the topsoil is properly placed and not mixed with subsoil. This includes the locations where backfilling is delayed until tile repairs are completed. The inspector should also be alert for any damage to repaired tile occurring during backfilling and order repairs if needed.



At locations such as road and stream crossings, it is not possible to build the pipeline as a continuous unit; therefore, these locations will be left open until the tie-in connections are made. There could be tile line to be repaired and the topsoil must be properly handled when the backfilling is done.

\*13. Clean-up.

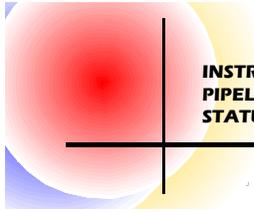
The inspector should insure that all rocks and debris have been cleaned up and removed from the tract or otherwise disposed of as agreed to by the landowner.

\*14. Restoration of Aboveground Improvements.

The pipeline ROW is restored, as nearly as possible, to its original condition and configuration. Any disturbed terraces, drainageways, etc. must be properly regraded before the work crews leave the area. Terraces, drainageways, and untilled areas should be seeded and mulch used as needed to prevent erosion. Repairs to terraces, levees, etc. should include approximately 5% of overfill to allow for settlement.

\*15. Testing.

The pipeline is strength-tested hydrostatically. Any failures during the test will require excavation to repair the damaged section and could result in the need for tile repair. Topsoil replacement standards would also apply. An inspector should be available to monitor such work. Depending on the company's testing schedule and the time required to complete other portions of the project, testing may not occur for weeks or even months after construction is otherwise complete on an individual tract.



## SUGGESTED INSPECTION PROGRAM PRACTICES

This section is not intended as instruction or direction in the organization of an inspection program but rather to suggest information which should be attained and methods which may be used for such a program. Most of the items discussed in the following should be obtained and examined well in advance of the commencement of construction.

1. Maps and legal descriptions showing the project route and right-of-way limits.
2. Company and/or contractor project specifications and procedures manuals.
3. Proposed project schedules.
4. Line lists showing, for each tract of land involved, the landowner; any available information on tile lines, terraces, etc.; any special construction practices to be followed; and any special arrangements with the landowner to be abided by.
5. A list of company and contractor personnel, and others as needed, who can be contacted by the inspector to resolve any problems encountered during construction. The list should also indicate how these people can be reached.
6. A written record should be kept for each tract of land and contain at a minimum the following information. The record can be kept as a daily log or any other method desired, but the date and the name of the inspector making the entry should always be recorded. Entries should include:
  - a. Weather and soil conditions.
  - b. Whether non-standard work was performed due to separate landowner agreements or other justifiable reasons.
  - c. Details of all drain tile and other features encountered and how the situation was handled.
  - d. Details of clean-up, final repairs, etc.
  - e. Contacts with and comments by landowners.
  - f. Records on acceptance or rejection of all work items.

# APPENDIX I

**CHAPTER 479 PIPELINES AND UNDERGROUND GAS STORAGE**

479.1 Purpose--applicability. .... 1  
 479.2 Definitions. .... 1  
 479.3 Conditions attending operation..... 2  
 479.4 Dangerous construction--inspection. 2  
 479.5 Application for permit..... 2  
 479.6 Petition..... 3  
 479.7 Hearing--notice. .... 4  
 479.8 Time and place. .... 4  
 479.9 Objections..... 4  
 479.10 Filing. .... 4  
 479.11 Examination--testimony. .... 5  
 479.12 Final order--condition..... 5  
 479.13 Costs and fees..... 5  
 479.14 Inspection fee. .... 5  
 479.15 Failure to pay. .... 5  
 479.16 Receipt of funds..... 6  
 479.17 Rules..... 6  
 479.18 Permit. .... 6  
 479.19 Limitation on grant. .... 6  
 479.20 Sale of permit. .... 6  
 479.21 Transfer of permit. .... 6  
 479.22 Records. .... 6  
 479.23 Extension of permit..... 7  
 479.24 Eminent domain..... 7  
 479.25 Damages. .... 7  
 479.26 Financial condition of permittee--bond..... 8  
 479.27 Venue. .... 8  
 479.28 Orders--enforcement. .... 8  
 479.29 Land restoration..... 8  
 479.30 Entry for land surveys..... 10  
 479.31 Civil penalty. .... 10  
 479.32 Rehearing--judicial review. .... 11  
 479.33 Authorized federal aid..... 11  
 479.34 Cancellation..... 11  
 479.35 to 479.40 Reserved ..... 11  
 479.41 Arbitration agreements. .... 12  
 479.42 Subsequent pipelines. .... 12  
 479.43 Damage agreement..... 12  
 479.44 Negotiated fee. .... 12  
 479.45 Particular damage claims. .... 12  
 479.46 Determination of installation damages. .... 13  
 479.47 Subsequent tiling. .... 14  
 479.48 Reversion on nonuse..... 15  
 479.49 Farmland improvements..... 15

**479.1 Purpose--applicability.**

It is the purpose of the general assembly in enacting this law to confer upon the utilities board the power and authority to supervise

the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state by pipeline, whether specifically mentioned in this chapter or not, and the power and authority to supervise the underground storage of gas, to protect the safety and welfare of the public in its use of public or private highways, grounds, waters, and streams of any kind in this state. However, this chapter does not apply to interstate natural gas or hazardous liquid pipelines, pipeline companies, and underground storage, as these terms are defined in chapters 479A and 479B.

Section History: Early form

[C35, § 8338-f14; C39, § 8338.22; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.1; C77, 79, 81, § 479.1]

Section History: Recent form

88 Acts, ch 1074, §27; 95 Acts, ch 192, § 5

**479.2 Definitions.**

As used in this chapter:

1. "Board" means the utilities board within the utilities division of the department of commerce.
2. "Pipeline" means a pipe, pipes, or pipelines used for the transportation or transmission of a solid, liquid, or gaseous substance, except water, within or through this state. However, the term does not include interstate pipe, pipes, or pipelines used for the transportation or transmission of natural gas or hazardous liquids.
3. "Pipeline company" means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state. However, the term does not include a person owning, operating, or controlling interstate pipelines for the transportation or transmission of natural gas or hazardous liquids.

4. "Underground storage" means storage of gas in a subsurface stratum or formation of the earth.

Section History: Early form

[C31, § 8338-d1; C35, § 8338-f15; C39, § 8338.23; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.2; C77, 79, 81, § 479.2]

Section History: Recent form

88 Acts, ch 1074, §28; 95 Acts, ch 192, § 6

**479.3 Conditions attending operation.**

No pipeline company shall construct, maintain or operate any pipeline or lines under, along, over or across any public or private highways, grounds, waters or streams of any kind in this state except in accordance with the provisions of this chapter.

Section History: Early form

[C31, § 8338-d2; C35, § 8338-f16; C39, § 8338.24; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.3; C77, 79, 81, § 479.3]

**479.4 Dangerous construction-- inspection.**

The board is vested with power and authority and it shall be its duty to supervise all pipelines and underground storage and pipeline companies and shall from time to time inspect and examine the construction, maintenance and the condition of said pipelines and underground storage facilities and whenever said board shall determine that any pipeline and underground storage facilities or any apparatus, device or equipment used in connection therewith is unsafe and dangerous it shall immediately in writing notify said pipeline company, constructing or operating said pipeline and underground storage facilities, device, apparatus or other equipment to repair or replace any defective or unsafe part or portion of said pipeline and underground storage facilities, device, apparatus or equipment.

All faulty construction, as determined by the inspector, shall be repaired immediately by

the contractor operating for the pipeline company and the cost of such repairs shall be paid by said contractor. If such repairs are not made by contractor, the board shall proceed to collect under the provisions of section 479.26.

Section History: Early form

[C31, § 8338-d29; C35, § 8338-f17; C39, § 8338.25; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.4; C77, 79, 81, § 479.4]

Footnotes

See also § 479.29

**479.5 Application for permit.**

A pipeline company doing business in this state shall file with the board its verified petition asking for a permit to construct, maintain and operate its pipeline or lines along, over or across the public or private highways, grounds, waters and streams of any kind of this state. Any pipeline company now owning or operating a pipeline in this state shall be issued a permit by the board upon supplying the information as provided for in section 479.6.

A pipeline company doing business in this state and proposing to engage in underground storage of gas within this state shall file with the board its verified petition asking for a permit to construct, maintain and operate facilities for the underground storage of gas to include the construction, placement, maintenance and operation of machinery, appliances, fixtures, wells, pipelines, and stations necessary for the construction, maintenance and operation of the gas underground storage facilities.

A pipeline company shall hold informational meetings in each county in which real property or property rights will be affected at least thirty days prior to filing the petition for a new pipeline. A member of the board or a person designated by the board shall serve as the presiding officer at each meeting, shall present an agenda for the meeting which shall include a summary of the legal rights of the affected landowners, and shall distribute and review the statement of individual rights required under section

6B.2A. A formal record of the meeting shall not be required.

The meeting shall be held at a location reasonably accessible to all persons, companies, or corporations which may be affected by the granting of the permit.

The pipeline company seeking the permit for a new pipeline shall give notice of the informational meeting to each person determined to be a landowner affected by the proposed project and each person in possession of or residing on the property. For the purposes of the informational meeting, "landowner" means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and "pipeline" means a line transporting a solid, liquid, or gaseous substance, except water, under pressure in excess of one hundred fifty pounds per square inch and extending a distance of not less than five miles or having a future anticipated extension of an overall distance of five miles.

The notice shall set forth the name of the applicant; the applicant's principal place of business; the general description and purpose of the proposed project; the general nature of the right-of-way desired; the possibility that the right-of-way may be acquired by condemnation if approved by the utilities board; a map showing the route of the proposed project; a description of the process used by the utilities board in making a decision on whether to approve a permit including the right to take property by eminent domain; that the landowner has a right to be present at such meeting and to file objections with the board; and a designation of the time and place of the meeting. The notice shall be served by certified mail with return receipt requested not less than thirty days previous to the time set for the meeting, and shall be published once in a newspaper of general circulation in the county. The publication shall be considered notice to landowners whose residence is not known and to each person in possession of or residing on the property provided a good faith effort to notify can be demonstrated by the pipeline company.

A pipeline company seeking rights under this chapter shall not negotiate or purchase any easements or other interests in land in any county known to be affected by the proposed project prior to the informational meeting.

Section History: Early form

[C31, § 8338-d3; C35, § 8338-f18; C39, § 8338.26; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.5; C77, 79, 81, § 479.5]

Section History: Recent form

88 Acts, ch 1074, §29; 95 Acts, ch 192, § 7; 2000 Acts, ch 1179, §24, 30

Internal References

Referred to in § 6B.2A, 479.30

**479.6 Petition.**

Said petition shall state:

1. The name of the individual, firm, corporation, company, or association asking for said permit.
2. The applicant's principal office and place of business.
3. A legal description of the route of said proposed line or lines, together with a map thereof.
4. A general description of the public or private highways, grounds and waters, streams and private lands of any kind along, over or across which said proposed line or lines will pass.
5. The specifications of material and manner of construction.
6. The maximum and normal operating pressure under which it is proposed to transport any solid, liquid, or gaseous substance, except water.
7. If permission is sought to construct, maintain and operate facilities for the underground storage of gas said petition shall include the following information in addition to that stated above:

a. A description of the public or private highways, grounds and waters, streams and private lands of any kind under which such storage is proposed, together with a map thereof.

b. Maps showing the location of proposed machinery, appliances, fixtures, wells and stations necessary for the construction, maintenance and operation of such gas underground storage facilities.

8. The possible use of alternative routes.

9. The relationship of the proposed project to the present and future land use and zoning ordinances.

10. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

11. By affidavit, that informational meetings were held in each county which the proposed project will affect and the time and place of each meeting.

Section History: Early form

[C31, § 8338-d4; C35, § 8338-f19; C39, § 8338.27; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.6; C77, 79, 81, § 479.6]

Internal References

Referred to in § 479.5, 479.23

**479.7 Hearing--notice.**

Upon the filing of said petition the board shall fix a date for hearing thereon and shall cause notice thereof to be published in some newspaper of general circulation in each county through which said proposed line or lines or gas storage facilities will extend; said notice to be published for two consecutive weeks.

Where a petition seeks the use of the right of eminent domain over specific parcels of real property, the board shall prescribe the notice to be served upon the owners of record and parties in possession of the property over which the use of the right of eminent domain is sought. The notice shall

include the statement of individual rights required pursuant to section 6B.2A.

Section History: Early form

[C31, § 8338-d5; C35, § 8338-f20; C39, § 8338.28; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.7; C77, 79, 81, § 479.7]

Section History: Recent form

2000 Acts, ch 1179, §25, 30

**479.8 Time and place.**

The hearing shall not be less than ten days nor more than thirty days from the date of the last publication and where the proposed new pipeline would operate under pressure exceeding one hundred fifty pounds per square inch and exceed five miles in length, shall be held in the county seat of the county located at the midpoint of the proposed line or lines or the county in which the proposed gas storage facility would be located.

Section History: Early form

[C31, § 8338-d6; C35, § 8338-f21; C39, § 8338.29; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.8; C77, 79, 81, § 479.8; 81 Acts, ch 159, § 10]

**479.9 Objections.**

Any person, corporation, company or city whose rights or interests may be affected by said pipeline or lines or gas storage facilities may file written objections to said proposed pipeline or lines or gas storage facilities or to the granting of said permit.

Section History: Early form

[C31, § 8338-d7; C35, § 8338-f22; C39, § 8338.30; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.9; C77, 79, 81, § 479.9]

**479.10 Filing.**

All such objections shall be on file in the office of said board not less than five days before the date of hearing on said application but said board may permit the filing of said objections later than five days before said hearing, in which event the

applicant must be granted a reasonable time to meet said objections.

Section History: Early form

[C31, § 8338-d8; C35, § 8338-f23; C39, § 8338.31; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.10; C77, 79, 81, § 479.10]

**479.11 Examination--testimony.**

The said board may examine the proposed route of said pipeline or lines and location of said gas storage area, or may cause such examination to be made by an engineer selected by it. At said hearing the said board shall consider said petition and any objections filed thereto and may in its discretion hear such testimony as may aid it in determining the propriety of granting such permit.

Section History: Early form

[C31, § 8338-d9; C35, § 8338-f24; C39, § 8338.32; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.11; C77, 79, 81, § 479.11]

**479.12 Final order--condition.**

The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to safety requirements and as to location and route as determined by it to be just and proper. Before a permit is granted to a pipeline company, the board, after a public hearing as provided in this chapter, shall determine whether the services proposed to be rendered will promote the public convenience and necessity, and an affirmative finding to that effect is a condition precedent to the granting of a permit.

Section History: Early form

[C31, § 8338-d10; C35, § 8338-f25; C39, § 8338.33; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.12; C77, 79, 81, § 479.12]

Section History: Recent form

88 Acts, ch 1074, §30

**Internal References**

Referred to in § 479.18

**479.13 Costs and fees.**

The applicant shall pay all costs of the informational meetings, hearing, and necessary preliminary investigation including the cost of publishing notice of hearing, and shall pay the actual unrecovered costs directly attributable to construction inspections conducted by the board or the board's designee.

Section History: Early form

[C31, § 8338-d11, -d12; C35, § 8338-f26; C39, § 8338.34; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.13; C77, 79, 81, § 479.13]

Section History: Recent form

88 Acts, ch 1074, §31

**479.14 Inspection fee.**

A pipeline company shall pay an annual inspection fee of fifty cents per mile of pipeline or fraction thereof for each inch of diameter of the pipeline located in the state, the inspection fee to be paid to the board for the calendar year in advance between January 1 and February 1 of each year.

Section History: Early form

[C31, § 8338-d13; C35, § 8338-f27; C39, § 8338.35; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.14; C77, 79, 81, § 479.14]

Section History: Recent form

88 Acts, ch 1074, §32

**479.15 Failure to pay.**

It shall be the duty of the board to collect all inspection fees provided in this chapter, and failure to pay any such inspection fee within thirty days after the time the same shall become due shall be cause for revocation of the permit.

Section History: Early form

[C35, § 8338-f28; C39, § 8338.36; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.15; C77, 79, 81, § 479.15]

**479.16 Receipt of funds.**

All moneys received under this chapter shall be remitted monthly to the treasurer of state and credited to the general fund of the state as provided in section 476.10.

Section History: Early form

[C31, § 8338-d14; C35, § 8338-f29, -f30; C39, § 8338.37, 8338.38; C46, 50, 54, 58, 62, 66, 71, § 490.16, 490.17; C73, 75, § 490.17; C77, 79, 81, § 479.16]

Section History: Recent form

87 Acts, ch 234, § 432; 94 Acts, ch 1107, §83

Internal References

Referred to in § 476.10

**479.17 Rules.**

The said board shall have full authority and power to promulgate such rules as it deems proper and expedient to insure the orderly conduct of the hearings herein provided for and also to prescribe rules for the enforcement of this chapter.

Section History: Early form

[C31, § 8338-d15; C35, § 8338-f31; C39, § 8338.39; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.18; C77, 79, 81, § 479.17]

**479.18 Permit.**

The board shall prepare and issue any permit granted in accordance with section 479.12. Said permit shall show the name and address of the pipeline company to which it is issued and identify by reference thereto the decision and order of the board under which said permit is issued. It shall be signed by the chairperson of the board and the official seal of the board shall be affixed thereto.

Section History: Early form

[C31, § 8338-d16; C35, § 8338-f32; C39, § 8338.40; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.19; C77, 79, 81, § 479.18]

**479.19 Limitation on grant.**

No exclusive right shall ever be granted to any pipeline company to construct, maintain, and operate its pipeline or lines along, over or across any public highway, grounds or waters and no such permit shall ever be granted for a longer period than twenty-five years.

Section History: Early form

[C31, § 8338-d17; C35, § 8338-f33; C39, § 8338.41; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.20; C77, 79, 81, § 479.19]

**479.20 Sale of permit.**

No permit shall be sold until the sale is approved by the board.

Section History: Early form

[C35, § 8338-f34; C39, § 8338.42; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.21; C77, 79, 81, § 479.20]

**479.21 Transfer of permit.**

If a transfer of such permit is made before the construction for which it was issued is completed in whole or in part such transfer shall not be effective until the person, company or corporation to whom it was issued shall file in the office of said board a notice in writing stating the date of such transfer and the name and address of said transferee.

Section History: Early form

[C31, § 8338-d11; C35, § 8338-f35; C39, § 8338.43; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.22; C77, 79, 81, § 479.21]

**479.22 Records.**

The board shall keep a record of all permits granted and issued by it, showing when and to whom issued and the location and route of said pipeline or lines or gas storage area covered thereby. When any transfer of such

permit has been made as provided in this chapter the said board shall also note upon its record the date of such transfer and the name and address of such transferee.

Section History: Early form

[C31, § 8338-d20; C35, § 8338-f36; C39, § 8338.44; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.23; C77, 79, 81, § 479.22]

#### **479.23 Extension of permit.**

A pipeline company may petition the board for the extension of a permit granted under this chapter by filing a petition containing the information required by section 479.6, subsections 1 through 4, 6, and 7, and section 479.26.

Section History: Early form

[C31, § 8338-d22; C35, § 8338-f37; C39, § 8338.45; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.24; C77, 79, 81, § 479.23]

Section History: Recent form

95 Acts, ch 192, § 8

#### **479.24 Eminent domain.**

A pipeline company granted a pipeline permit under this chapter shall be vested with the right of eminent domain\* to the extent necessary and as prescribed and approved by the board, not exceeding seventy-five feet in width for right-of-way and not exceeding one acre in any one location in addition to right-of-way for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline. The board may grant additional eminent domain rights where the pipeline company has presented sufficient evidence to adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline.

A pipeline company having secured a permit for underground storage of gas shall be vested with the right of eminent domain to

the extent necessary and as prescribed and approved by the board in order to appropriate for its use for the underground storage of gas any subsurface stratum or formation in any land which the board shall have found to be suitable and in the public interest for the underground storage of gas, and may appropriate other interests in property, as may be required to adequately examine, prepare, maintain, and operate the underground gas storage facilities. This chapter does not authorize the construction of a pipeline longitudinally on, over or under any railroad right-of-way or public highway, or at other than an approximate right angle to a railroad track or public highway without the consent of the railroad company, the state department of transportation, or the county board of supervisors, and this chapter does not authorize or give the right of condemnation or eminent domain for such purposes.

Section History: Early form

[C31, § 8338-d23; C35, § 8338-f38; C39, § 8338.46; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.25; C77, 79, 81, § 479.24]

Section History: Recent form

95 Acts, ch 192, § 9

Footnotes

\*See 253 Iowa 1143

Eminent domain, chapter 6A et seq.

#### **479.25 Damages.**

A pipeline company operating a pipeline or a gas storage area shall have reasonable access to the pipeline or gas storage area for the purpose of constructing, operating, maintaining, or locating pipes, pumps, pressure apparatus or other stations, wells, devices, or equipment used in or upon the pipeline or gas storage area; shall pay the owner of the land for the right of entry and the owner of crops for all damages caused by entering, using, or occupying the land; and shall pay to the owner all damages caused by the completion of construction of the pipeline due to wash or erosion of the soil at or along the location of the pipeline

and due to the settling of the soil along and above the pipeline. However, this section shall not prevent the execution of an agreement between the pipeline company and the owner of land or crops with reference to the use of the land.

Section History: Early form

[C31, § 8338-d26; C35, § 8338-f39; C39, § 8338.47; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.26; C77, 79, 81, § 479.25]

Section History: Recent form

95 Acts, ch 192, § 10

**479.26 Financial condition of permittee--bond.**

Before any permit is granted under this chapter the applicant must satisfy the board that the applicant has property within this state other than pipelines, subject to execution of a value in excess of two hundred fifty thousand dollars, or the applicant must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dollars with surety approved by the board, conditioned that the applicant will pay any and all damages legally recovered against it growing out of the construction or operation of its pipeline and gas storage facilities in the state of Iowa. When the pipeline company deposits with the board security satisfactory to the board as a guaranty for the payment of the damages, or furnishes to the board satisfactory proofs of its solvency and financial ability to pay the damages, the pipeline company is relieved of the provisions requiring bond.

Section History: Early form

[C31, § 8338-d27; C35, § 8338-f40; C39, § 8338.48; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.27; C77, 79, 81, § 479.26; 81 Acts, ch 159, § 11]

Internal References

Referred to in § 479.4, 479.23

**479.27 Venue.**

In all cases arising under this chapter, the district court of any county in which property of a pipeline company is located shall have jurisdiction.

Section History: Early form

[C31, § 8338-d28; C35, § 8338-f41; C39, § 8338.49; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.28; C77, 79, 81, § 479.27]

Section History: Recent form

95 Acts, ch 192, § 11

**479.28 Orders--enforcement.**

If said pipeline company fails to obey an order within a time prescribed by the said board the said board may commence an equitable action in the district court of the county where said defective, unsafe, or dangerous portion of said pipeline, device, apparatus or equipment is located to compel compliance with its said order. If, after due trial of said action the court finds that said order is reasonable, equitable and just, it shall decree a mandatory injunction compelling obedience to and compliance with said order and may grant such other relief as may be just and proper. Appeal from said decree may be taken in the same manner as in other actions.

Section History: Early form

[C31, § 8338-d30; C35, ' 8338-f42; C39, § 8338.50; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.29; C77, 79, 81, § 479.28]

Footnotes

Appeal in civil actions, chapter 625A

**479.29 Land restoration.**

1. The board shall, pursuant to chapter 17A, adopt rules establishing standards for the restoration of agricultural lands during and after pipeline construction. In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of

chapter 17A, and subsequent to the rulemaking proceedings, petition under those provisions for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

- a. Topsoil separation and replacement.
- b. Temporary and permanent repair to drain tile.
- c. Removal of rocks and debris from the right-of-way.
- d. Restoration of areas of soil compaction.
- e. Restoration of terraces, waterways, and other erosion control structures.
- f. Revegetation of untilled land.
- g. Future installation of drain tile or soil conservation structures.
- h. Restoration of land slope and contour.
- i. Restoration of areas used for field entrances and temporary roads.
- j. Construction in wet conditions.
- k. Designation of a pipeline company point of contact for landowner inquiries or claims.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A licensed professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be responsible for the inspection. A county board of supervisors may contract for the services of a licensed professional engineer for the purposes of the inspection. The

reasonable costs of the inspection shall be borne by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration or line location executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan, or with an independent agreement on land restoration or line location executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties pursuant to section 479.31.

6. The pipeline company shall allow landowners and the inspector to view the proposed center line of the pipeline prior to commencing trenching operations to insure that construction takes place in its proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted pursuant to this chapter, the land restoration plan, or the terms of an independent agreement with the pipeline company regarding land restoration or line location executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

[C73, 75, 77, 79, § 479.4; C81, § 479.29; 81 Acts, ch 159, § 12, 13]

Section History: Recent form

95 Acts, ch 192, § 12; 99 Acts, ch 85, §1, 11

Internal References

Referred to in § 331.303

8. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspectors' responsibility to require construction conforming with the standards provided by this chapter.

**479.30 Entry for land surveys.**

After the informational meeting or after the filing of a petition if no informational meeting is required, a pipeline company may enter upon private land for the purpose of surveying and examining the land to determine the direction or depth of a pipeline by giving ten days' written notice by restricted certified mail to the landowner as defined in section 479.5 and to any person residing on or in possession of the land. The entry for land surveys authorized in this section shall not be deemed a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry, survey, and examination.

9. Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met. The petitioners shall provide copies of the plan to all landowners of property that will be disturbed by the construction.

Section History: Early form

[C81, § 479.30]

Section History: Recent form

95 Acts, ch 192, § 13

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted pursuant to this section, or in the land restoration plan, if the alternative provisions are contained in agreements independently executed by the pipeline company and landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.

**479.31 Civil penalty.**

A person who violates this chapter or any rule or order issued pursuant to this chapter shall be subject to a civil penalty levied by the board not to exceed ten thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations. Civil penalties collected pursuant to this section shall be credited to and are appropriated for the Iowa energy center created in section 266.39C.

11. For purposes of this section, "construction" includes the removal of a previously constructed pipeline.

12. The requirements of this section shall apply only to pipeline construction projects commenced on or after June 1, 1999.

Section History: Early form

Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

Section History: Early form

[C71, 73, 75, § 490.31; C77, 79, § 479.29; C81, § 479.31]

Section History: Recent form

91 Acts, ch 112, § 3; 95 Acts, ch 192, § 14

Internal References

Referred to in § 479.29

**479.32 Rehearing--judicial review.**

Rehearing procedure for any person, company or corporation aggrieved by the action of the board in granting or failing to grant a permit under the provisions of this chapter shall be as provided in section 476.12. Judicial review may be sought in accordance with the terms of the Iowa administrative procedure Act.

Section History: Early form

[C71, 73, 75, § 490.32; C77, 79, § 479.30; C81, § 479.32]

Footnotes

See § 476.13

**479.33 Authorized federal aid.**

The board may enter into agreements with and receive moneys from the United States department of transportation for the inspection of pipelines to determine compliance with applicable standards of

pipeline safety, and for enforcement of the applicable standards of pipeline safety as provided by Pub. L. No. 103-272, as codified in 49 U.S.C. § 60101-60125.

Section History: Early form

[C71, 73, 75, § 490.33; C77, 79, § 479.31; C81, § 479.33]

Section History: Recent form

88 Acts, ch 1074, §33; 95 Acts, ch 49, §13

**479.34 Cancellation.**

A person seeking to acquire an easement or other property interest for the construction, maintenance or operation of a pipeline shall:

1. Allow the landowner or a person serving in a fiduciary capacity in the landowner's behalf to cancel an agreement granting an easement or other interest by certified mail with return requested to the company's principal place of business if received by the company within seven days, excluding Saturday and Sunday, of the date of the contract and inform the landowner or such fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or such fiduciary.
2. Provide the landowner or a person serving in a fiduciary capacity in the landowner's behalf with a form in duplicate for the notice of cancellation.
3. Not record any agreement until after the period for cancellation has expired.
4. Not include in the agreement any waiver of the right to cancel in accordance with this section. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each pipeline project.

Section History: Early form

[C81, § 479.34]

**479.35 to 479.40 Reserved**

**479.41 Arbitration agreements.**

If an easement or other written agreement between a landowner and a pipeline company provides for the determination through arbitration of the amount of monetary damages sustained by a landowner and caused by the construction, maintenance, or repair of a pipeline, and if either party has not appointed its arbitrator or agreed to an arbitrator under the agreement within thirty days after the other party has invoked the arbitration provisions of the agreement by written notice to the other party by restricted certified mail, the landowner or the pipeline company may petition a judicial magistrate in the county where the real property is located for the appointment of an arbitrator to serve in the stead of the arbitrator who would have been appointed or agreed to by the other party. Before filing the petition the landowner or pipeline company shall give notice of the petitioning of the judicial magistrate by restricted certified mail to the other party and file proof of mailing with the petition. If after hearing, the magistrate finds that the landowner or pipeline company has not been diligent in appointing or reasonable in agreeing to an arbitrator, the magistrate shall appoint an impartial arbitrator who shall have all of the powers and duties of an arbitrator appointed or agreed to by the other party under the agreement.

For purposes of this section only, "landowner" means the persons who signed the easement or other written agreement, their heirs, successors, and assigns.

Section History: Early form

[81 Acts, ch 159, § 2, 3]

Section History: Recent form

95 Acts, ch 192, § 15

**479.42 Subsequent pipelines.**

A pipeline company shall not install a subsequent pipeline upon its existing easement when a damage claim from the installation of its previous pipeline on that easement has not been resolved, unless the

damage claim is under litigation, arbitration, or a proceeding pursuant to section 479.46.

With the exception of claims for damage to drain tile and future crop deficiency, for this section to apply, landowners and tenants must submit in writing their claims for damages caused by installation of the pipeline within one year of final cleanup on the real property.

Section History: Early form

[81 Acts, ch 159, § 2, 4]

Section History: Recent form

95 Acts, ch 192, § 16

**479.43 Damage agreement.**

A pipeline company shall not install a pipeline until there is a written statement on file with the board as to how damages resulting from the construction of the pipeline shall be determined and paid, except in cases of eminent domain. The company shall provide a copy of the statement to the landowner.

Section History: Early form

[81 Acts, ch 159, § 2, 5]

**479.44 Negotiated fee.**

In lieu of a one-time lump sum payment for an easement or other property interest allowing a pipeline to cross the property, a landowner and the pipeline company may negotiate an annual fee, to be paid over a fixed number of years. Unless the easement provides otherwise, the annual fee shall run with the land and shall be payable to the owner of record.

Section History: Early form

[81 Acts, ch 159, § 2, 6]

**479.45 Particular damage claims.**

1. Compensable losses shall include, but are not limited to, all of the following:

a. Loss or reduced yield of crops or forage on the pipeline right-of-way, whether caused directly by construction or from disturbance of usual farm operations.

b. Loss or reduced yield of crops or yield from land near the pipeline right-of-way resulting from lack of timely access to the land or other disturbance of usual farm operations, including interference with irrigation.

c. Fertilizer, lime, or organic material applied by the landowner to restore land disturbed by construction to full productivity.

d. Loss of or damage to trees of commercial or other value that occurs at the time of construction, restoration, or at the time of any subsequent work by the pipeline company.

e. The cost of or losses in moving or relocating livestock, and the loss of gain by or the death or injury of livestock caused by the interruption or relocation of normal feeding.

f. Erosion on lands attributable to pipeline construction.

g. Damage to farm equipment caused by striking a pipeline, debris, or other material reasonably associated with pipeline construction while engaged in normal farming operations as defined in section 480.1.

2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the company in writing fourteen days prior to harvest in each year to assess crop deficiency.

Section History: Early form

[81 Acts, ch 159, § 2, 7]

Section History: Recent form

99 Acts, ch 85, §2, 11

**479.46 Determination of installation damages.**

1. The county board of supervisors shall determine when installation of a pipeline has been completed in that county for the purposes of this section. Not less than ninety days after the completion of installation, and if an agreement cannot be made as to damages, a landowner whose land was affected by the installation of the pipeline or a pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from the installation of the pipeline.

2. If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district of the county for the appointment of a compensation commission as provided in section 6B.4.

The application shall contain the following:

a. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

b. A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.

c. The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating the following:

a. That a compensation commission has been appointed to determine the damages caused by the installation of the pipeline.

b. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

c. The date, time, and place when the commissioners will view the premises and proceed to appraise the damages and that the pipeline company or the landowner may appear before the commissioners.

If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisal of damages shall be consolidated into one application, notice, and appraisal. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the installation of the pipeline and they shall file their report with the sheriff. The appraisal of damages returned by the commissioners is final unless appealed. After the appraisal of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisal of damages was made, the amount of the appraisal, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisal of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages; if the award does not exceed one hundred ten percent, the landowners shall pay the fees and costs incurred by the pipeline company. The pipeline company

shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, "damages" means compensation for damages to the land, crops, and other personal property caused by the construction activity of installing a pipeline and its attendant structures but does not include compensation for a property interest, and "landowner" includes a farm tenant.

8. The provisions of this section do not apply if the easement provides for any other means of negotiation or arbitration.

Section History: Early form

[81 Acts, ch 159, § 2, 8]

Section History: Recent form

95 Acts, ch 192, § 17; 2000 Acts, ch 1179, §26, 30

Internal References

Referred to in § 479.42

**479.47 Subsequent tiling.**

All additional costs of new tile construction caused by an existing pipeline shall be paid by the pipeline company. To receive compensation under this section, the landowner or agent of the landowner shall either present an invoice specifying the additional costs caused by the presence of the pipeline which is accompanied by a written verification of the additional costs by the county engineer or soil and water conservation district conservationist or reach an agreement with the pipeline company on the project design and share of the cost to

be paid by the pipeline company during the planning of the tiling project.

Section History: Early form

[81 Acts, ch 159, § 2, 9]

Section History: Recent form

83 Acts, ch 128, § 1, 2; 87 Acts, ch 23, § 56; 92 Acts, ch 1103, § 9; 95 Acts, ch 192, § 18

Internal References

Referred to in §479.48

**479.48 Reversion on nonuse.**

1. If a pipeline right-of-way, or any part of a pipeline right-of-way, is wholly abandoned for pipeline purposes by the relocation of the pipeline, is not used or operated for a period of five consecutive years, or if the construction of the pipeline has been commenced and work has ceased and has not in good faith resumed for five years, the right-of-way may revert as provided in this section to the person who, at the time of the abandonment or nonuse, is the owner of the tract from which such right-of-way was taken. For purposes of this section, a pipeline or a pipeline right-of-way is not considered abandoned or unused if it is transporting product or is being actively maintained with reasonable anticipation of a future use.

2. To effect a reversion on nonuse of right-of-way, the owner or holder of purported fee title to such real estate shall serve notice upon the owner of such right-of-way easement and, if filed of record, successors in interest and upon any party in possession of the real estate. The written notice shall accurately describe the real estate and easement in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment or nonuse, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the

county in which the real estate is located disputing the facts contained in the notice.

3. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication an affidavit shall not be required before publication. If an affidavit disputing the facts contained in the notice is not filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached and endorsed, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

4. Upon reversion of the easement, the landowner may require the pipeline company to remove any pipe or pipeline facility remaining on the property. Provisions of this chapter relating to damages shall apply when the pipeline is removed.

5. Unless otherwise agreed to in writing by the landowner and the pipeline company, if a pipeline right-of-way is abandoned for pipeline use, but the pipe is not removed from the right-of-way, the pipeline company shall remain subject to section 479.49, shall remain responsible for the additional costs of subsequent tiling as provided for in section 479.47, shall mark the location of the line in response to a notice of proposed excavation in accordance with chapter 480, and shall remain subject to the damage provisions of this chapter in the event access to or excavation relating to the pipe is required. The landowner shall provide reasonable access to the pipeline in order to carry out the responsibilities of this subsection.

Section History: Recent form

99 Acts, ch 85, §3, 11; 2000 Acts, ch 1139, §1

**479.49 Farmland improvements.**

A landowner or contractor may require a representative of the pipeline company to be present on site, at no charge to the landowner, at all times during each phase

and separate activity related to a farmland improvement within fifty feet of either side of a pipeline. If the pipeline company and the landowner or contractor constructing the farmland improvement mutually agree that a representative of the pipeline company is not required to be present, the requirements of this section are waived in relation to the farmland improvement which would have otherwise made the requirements of this section applicable. A farmland improvement includes, but is not limited to, the terracing of farmland and tiling.

Section History: Recent form

2000 Acts, ch 1139, §2

Internal References

Referred to in § 479.48

# APPENDIX II

**CHAPTER 479A INTERSTATE NATURAL GAS PIPELINES**

479A.1 Purpose..... 1  
 479A.2 Definitions..... 1  
 479A.3 Conditions attending operation..... 1  
 479A.4 Construction inspection..... 1  
 479A.5 Notice prior to construction..... 2  
 479A.6 Cost of construction inspection..... 2  
 479A.7 Annual inspection fee..... 2  
 479A.8 Failure to pay--penalties..... 2  
 479A.9 Deposit of funds..... 2  
 479A.10 Rules..... 2  
 479A.11 Damages..... 2  
 479A.12 Financial condition of company--bond or other security..... 3  
 479A.13 Jurisdiction..... 3  
 479A.14 Land restoration--standards--inspection..... 3  
 479A.15 Entry for land surveys..... 5  
 479A.16 Civil penalty..... 5  
 479A.17 Rehearing--judicial review..... 5  
 479A.18 Federal inspection..... 5  
 479A.19 Right to cancel agreement..... 5  
 479A.20 Arbitration agreements..... 6  
 479A.21 Subsequent pipelines..... 6  
 479A.22 Damage statement..... 6  
 479A.23 Negotiated annual fee..... 7  
 479A.24 Particular damage claims..... 7  
 479A.25 Determination of installation damages..... 7  
 479A.26 Subsequent tiling..... 9  
 479A.27 Reversion on nonuse..... 9  
 479A.28 Farmland improvements..... 10

**479A.1 Purpose.**

It is the purpose of the general assembly in enacting this law to confer upon the utilities board the power and authority to implement certain controls over the transportation of natural gas to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a pipeline within the state. It is also the purpose of the general assembly in enacting this law to provide for the board to act as an agent for the federal government in determining pipeline company compliance with the standards of the federal government for pipelines within the boundaries of the state.

Section History: Recent form

88 Acts, ch 1074, §1

**479A.2 Definitions.**

As used in this chapter, unless the context requires otherwise:

1. "Board" means the utilities board within the utilities division of the department of commerce.
2. "Pipeline" means an interstate pipe, pipes, or pipelines used for the transportation or transmission of natural gas within or through this state.
3. "Pipeline company" means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines.
4. "Underground storage" means the storage of natural gas in a subsurface stratum or formation of the earth by a pipeline company.

Section History: Recent form

88 Acts, ch 1074, §2

Internal References

Referred to in §437A.5

**479A.3 Conditions attending operation.**

A pipeline company shall not construct, maintain, or operate pipeline under, along, over, or across any public or private highways, grounds, waters, or streams of any kind in this state except in accordance with this chapter.

Section History: Recent form

88 Acts, ch 1074, §3

**479A.4 Construction inspection.**

The board shall supervise pipelines, pipeline companies, and underground storage, and shall inspect the construction, maintenance, and condition of pipelines and underground storage facilities in accordance with section

479A.18. When inspecting for safety standard compliance, the board shall apply only United States department of transportation safety standards.

Section History: Recent form

88 Acts, ch 1074, §4

#### **479A.5 Notice prior to construction.**

Before beginning construction in this state, a pipeline company shall provide an adequate opportunity for state inspection, by giving written notice to the chairperson of the board stating the time, date, location, and nature of the construction. The notice shall be filed with the chairperson of the board not less than five business days before commencement of the construction.

Section History: Recent form

88 Acts, ch 1074, §5

#### **479A.6 Cost of construction inspection.**

A pipeline company shall pay actual unrecovered costs directly attributable to construction inspections conducted by the board or the board's designee.

Section History: Recent form

88 Acts, ch 1074, §6

#### **479A.7 Annual inspection fee.**

A pipeline company shall pay an annual inspection fee of fifty cents per mile of pipeline or fraction thereof for each inch of diameter of the pipeline located in this state. The annual inspection fee shall be paid for the calendar year in advance between January 1 and February 1 of each year.

Section History: Recent form

88 Acts, ch 1074, §7

#### **479A.8 Failure to pay--penalties.**

The board shall collect the inspection fees, and failure to pay an inspection fee within thirty days after the time the fee becomes due is cause for the assessment of civil

penalties in accordance with section 479A.16.

Section History: Recent form

88 Acts, ch 1074, §8

#### **479A.9 Deposit of funds.**

Moneys received under this chapter shall be credited to the general fund of the state as provided in section 476.10.

Section History: Recent form

88 Acts, ch 1074, §9; 94 Acts, ch 1107, §84; 99 Acts, ch 85, §10, 11

Internal References

Referred to in § 476.10

#### **479A.10 Rules.**

The board shall adopt rules, pursuant to chapter 17A for the enforcement of this chapter.

Section History: Recent form

88 Acts, ch 1074, §10

#### **479A.11 Damages.**

A pipeline company operating pipelines or underground storage shall be given reasonable access to the pipelines and storage areas for the purpose of constructing, operating, maintaining, or locating their pipes, pumps, pressure apparatus, or other stations, wells, devices, or equipment used in or upon a pipeline or storage area, but shall pay the owner of the lands for the right of entry and the owner of crops on the land all damages caused by entering, using, or occupying the lands for these purposes; and shall pay to the owner of the lands, after the completion of construction of the pipeline or storage, all damages caused by settling of the soil along and above the pipeline, and wash or erosion of the soil along the pipeline due to the construction of the pipeline. However, this section does not prevent the execution of an agreement with other terms between the

pipeline company and the owner of the land or crops with reference to their use.

Section History: Recent form

88 Acts, ch 1074, §11; 95 Acts, ch 192, § 19

**479A.12 Financial condition of company--bond or other security.**

Before construction is begun by a pipeline company, the company shall satisfy the board that the company has property subject to execution within this state other than pipelines, of a value in excess of two hundred fifty thousand dollars, or the company must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dollars with surety approved by the board, conditioned that the company will pay any and all damages legally recovered against it growing out of the construction, abandonment, or operation of its pipeline and underground storage facilities in this state, or the company shall deposit with the board security satisfactory to the board as a guaranty for the payment of that amount of damages, or furnish to the board satisfactory proofs of its solvency and financial ability to pay that amount of damages.

Section History: Recent form

88 Acts, ch 1074, §12; 98 Acts, ch 1093, §1

**479A.13 Jurisdiction.**

In all cases arising under this chapter, the district court of any county in which property of a pipeline company is located has jurisdiction of a case involving that company.

Section History: Recent form

88 Acts, ch 1074, §13; 95 Acts, ch 192, § 20

**479A.14 Land restoration--standards--inspection.**

1. The board shall adopt rules establishing standards for the restoration of agricultural lands during and after pipeline construction.

In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. A county board of supervisors may, under chapter 17A and subsequent to the rulemaking proceedings, petition for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

- a. Topsoil separation and replacement.
- b. Temporary and permanent repair to drain tile.
- c. Removal of rocks and debris from the right-of-way.
- d. Restoration of areas of soil compaction.
- e. Restoration of terraces, waterways, and other erosion control structures.
- f. Revegetation of untilled land.
- g. Future installation of drain tile or soil conservation structures.
- h. Restoration of land slope and contour.
- i. Restoration of areas used for field entrances and temporary roads.
- j. Construction in wet conditions.
- k. Designation of a pipeline company point of contact for landowner inquiries or claims.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A licensed professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be

responsible for the inspection. The reasonable costs of the inspection shall be borne by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company, and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of a pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan, or with an independent agreement on land restoration executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties pursuant to section 479A.16.

6. The pipeline company shall allow landowners and the inspector to view the proposed center line of the pipeline before commencing trenching operations to ensure that construction takes place in the proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted under this chapter, the land restoration plan approved by the board, or the terms of an independent agreement with the pipeline company regarding line location or land restoration executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

8. The board shall instruct inspectors appointed by the county board of supervisors regarding the content of this chapter and the standards and the inspectors' responsibility to require construction conforming with them.

9. Prior to the initiation of construction, the pipeline company shall file a written land restoration plan with the board describing the methods and procedures by which compliance with this section and the standards adopted under this section will be achieved. The board shall review this plan to insure that the requirements of this section and rules adopted pursuant to this section are met. After board review, the pipeline company shall provide copies of the plan to all landowners of property that will be disturbed by the construction. The requirements of this subsection may be waived by the board to the extent an environmental impact statement addressing the land restoration subjects in subsection 1 was prepared by the federal energy regulatory commission.

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted pursuant to this section, or in the land restoration plan if the alternative provisions are contained in agreements independently executed by the pipeline company and the landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.

11. For the purposes of this section, "construction" includes the removal of a previously constructed pipeline.

Section History: Recent form

88 Acts, ch 1074, §14; 95 Acts, ch 192, § 21; 99 Acts, ch 85, §4, 11; 2000 Acts, ch 1080, §1

#### **479A.15 Entry for land surveys.**

A pipeline company may enter upon private land for the purpose of surveying and examining the land to determine direction or depth of a pipeline by giving ten days' written notice by restricted certified mail to the landowner and to any person residing on or in possession of the land. For purposes of this section only, "landowner" means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property. The entry for land surveys authorized in this section is not a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry and survey.

Section History: Recent form

88 Acts, ch 1074, §15; 95 Acts, ch 192, § 22

#### **479A.16 Civil penalty.**

A person who violates this chapter or a rule or an order issued pursuant to this chapter is subject to a civil penalty levied by the board not to exceed one thousand dollars for each violation. Each day that the violation continues constitutes a separate offense. However, the civil penalty shall not exceed two hundred thousand dollars for any related series of violations. Civil penalties collected pursuant to this section shall be credited to and are appropriated for the Iowa energy center created in section 266.39C.

A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after

notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

Section History: Recent form

88 Acts, ch 1074, §16; 95 Acts, ch 192, § 23

Internal References

Referred to in § 479A.8, 479A.14

#### **479A.17 Rehearing--judicial review.**

Rehearing procedure for a person aggrieved by the action of the board in assessing or failing to assess civil penalties under this chapter shall be as provided in section 476.12. Judicial review may be sought in accordance with chapter 17A.

Section History: Recent form

88 Acts, ch 1074, §17

#### **479A.18 Federal inspection.**

The board may enter into agreements with and receive moneys from the United States department of transportation for the inspection of pipelines to determine compliance with the applicable standards of pipeline safety as provided by Pub. L. No. 103-272, as codified in 49 U.S.C. § 60101-60125.

Section History: Recent form

88 Acts, ch 1074, §18; 95 Acts, ch 49, § 14

Internal References

Referred to in § 479A.4

#### **479A.19 Right to cancel agreement.**

1. A person seeking to acquire an easement or other property interest for the construction, maintenance, or operation of a pipeline shall allow the landowner or a person serving in a fiduciary capacity in the

landowner's behalf to cancel an agreement granting an easement or other interest by certified mail with return requested to the company's principal place of business if received by the company within seven days, excluding Saturday and Sunday, of the date of the contract; shall inform the landowner or fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or fiduciary; and shall provide the landowner or fiduciary with a form in duplicate for the notice of cancellation.

2. A person seeking to acquire an easement or other property interest for the construction, maintenance, or operation of a pipeline shall not record an agreement until after the period for cancellation has expired, and shall not include in an agreement a waiver of the right to cancel in accordance with this section.

3. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each pipeline project.

Section History: Recent form

88 Acts, ch 1074, §19

#### **479A.20 Arbitration agreements.**

Notwithstanding conflicting provisions of chapter 679A, if an easement or other written agreement between a landowner and a pipeline company provides for the determination through arbitration of the amount of monetary damages sustained by a landowner and caused by the construction, maintenance, or repair of a pipeline, and if either party has not appointed its arbitrator or agreed to an arbitrator under the agreement within thirty days after the other party has invoked the arbitration provisions of the agreement by written notice to the other party by restricted certified mail, the landowner or the pipeline company may petition a magistrate in the county where the real property is located for the appointment of an arbitrator to serve in place of the arbitrator who would have been appointed or agreed to by the other party. Before filing the petition the landowner or pipeline company shall give notice of the

petitioning of the magistrate by restricted certified mail to the other party and file proof of mailing with the petition. If, after hearing, the magistrate finds that the landowner or pipeline company has not been diligent in appointing or reasonable in agreeing to an arbitrator, the magistrate shall appoint an impartial arbitrator who shall have all of the powers and duties of an arbitrator appointed or agreed to by the other party under the agreement.

For purposes of this section only, "landowner" means the persons who signed the easement or other written agreement, their heirs, successors, and assigns.

Section History: Recent form

88 Acts, ch 1074, §20; 95 Acts, ch 192, § 24

#### **479A.21 Subsequent pipelines.**

A pipeline company shall not install a subsequent pipeline upon its existing easement when a damage claim from the installation of its previous pipeline on that easement has not been resolved unless that claim is under litigation or arbitration or is the subject of a proceeding pursuant to section 479A.25.

Section History: Recent form

88 Acts, ch 1074, §21; 95 Acts, ch 192, § 25

#### **479A.22 Damage statement.**

A pipeline company shall not install a pipeline unless there is a written statement on file with the board as to how damages resulting from the construction of the pipeline shall be determined and paid, except in cases of eminent domain. The company shall provide a copy of the statement to the landowner.

Section History: Recent form

88 Acts, ch 1074, §22

**479A.23 Negotiated annual fee.**

In lieu of a one-time lump sum payment for an easement or other property interest allowing a pipeline to cross property, a landowner and the pipeline company may negotiate an annual fee, to be paid over a fixed number of years. Unless the easement provides otherwise, the annual fee shall run with the land and shall be payable to the owner of record.

Section History: Recent form

88 Acts, ch 1074, §23

**479A.24 Particular damage claims.**

1. Compensable losses shall include, but are not limited to, all of the following:

a. Loss or reduced yield of crops or forage on the pipeline right-of-way, whether caused directly by construction or from disturbance of usual farm operations.

b. Loss or reduced yield of crops or yield from land near the pipeline right-of-way resulting from lack of timely access to the land or other disturbance of usual farm operations, including interference with irrigation.

c. Fertilizer, lime, or organic material applied by the landowner to restore land disturbed by construction to full productivity.

d. Loss of or damage to trees of commercial or other value that occurs at the time of construction, restoration, or at the time of any subsequent work by the pipeline company.

e. The cost of or losses in moving or relocating livestock, and the loss of gain by, or the death or injury of livestock caused by the interruption or relocation of normal feeding.

f. Erosion on lands attributable to pipeline construction.

g. Damage to farm equipment caused by striking a pipeline, debris, or other material reasonably associated with pipeline construction while engaged in normal

farming operations as defined in section 480.1.

2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the company in writing fourteen days prior to harvest in each year to assess crop deficiency.

3. With the exception of claims for damage to drain tile and future crop deficiency, landowners and tenants must submit in writing their claims for damages caused by installation of the pipeline within one year of completion of installation of a pipeline as determined by the county board of supervisors.

Section History: Recent form

88 Acts, ch 1074, §24; 99 Acts, ch 85, §5, 11

**479A.25 Determination of installation damages.**

1. The county board of supervisors shall determine when installation of a pipeline has been completed in that county for the purposes of this section. Not less than ninety days after the completion of installation, and if an agreement cannot be made as to damages, a landowner whose land was affected by the installation of the pipeline or the pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from the installation of the pipeline.

2. If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district of the county for the appointment of a compensation commission as provided in section 6B.4.

The application shall contain all of the following:

- a. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.
- b. A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.
- c. The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating all of the following:

- a. That a compensation commission has been appointed to determine the damages caused by the installation of the pipeline.
- b. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.
- c. The place, date, and time when the commissioners will view the premises and proceed to appraise the damages and that the pipeline company or landowner may appear before the commissioners.

If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisal of damages shall be consolidated into one application, notice, and appraisal. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the installation of the pipeline. The commissioners shall file their report with the sheriff. The appraisal of damages returned by the commissioners is final unless appealed. After the appraisal of damages has been delivered to the sheriff by the compensation commission, the sheriff

shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisal of damages was made, the amount of the appraisal, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisal of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners, if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages. If the award does not exceed one hundred ten percent, the landowners shall pay the fees and costs incurred by the pipeline company. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, "damages" means compensation for damages to the land, crops, and other personal property caused by the construction activity of installing a pipeline and its attendant structures but does not include compensation for a property interest, and "landowner" includes a tenant.

8. This section does not apply if the easement provides for any other means of negotiation or arbitration.

## Section History: Recent form

88 Acts, ch 1074, §25; 95 Acts, ch 192, § 26; 2000 Acts, ch 1179, §27, 30

## Internal References

Referred to in § 479A.21

**479A.26 Subsequent tiling.**

Additional costs of new tile construction caused by an existing pipeline shall be paid by the pipeline company. To receive compensation under this section, the landowner or agent of the landowner shall either present an invoice specifying the additional costs caused by the presence of the pipeline which is accompanied by a written verification of the additional costs by the county engineer or soil and water conservation district conservationist or reach an agreement with the pipeline company on the project design and share of the cost to be paid by the pipeline company during the planning of the tiling project.

## Section History: Recent form

88 Acts, ch 1074, § 26; 92 Acts, ch 1103, § 10; 95 Acts, ch 192, § 27

## Internal References

Referred to in §479A.27

**479A.27 Reversion on nonuse.**

1. If a pipeline right-of-way, or any part of a pipeline right-of-way, is wholly abandoned for pipeline purposes by the relocation of the pipeline, is not used or operated for a period of five consecutive years, or if the construction of the pipeline has been commenced and work has ceased and has not in good faith resumed for five years, the right-of-way may revert as provided in this section to the person who, at the time of the abandonment or nonuse, is the owner of the tract from which such right-of-way was taken. Abandonment of pipeline facilities requires approval from the federal energy regulatory commission prior to this provision taking effect.

2. To effect a reversion on nonuse of right-of-way, the owner or holder of purported fee title to such real estate shall serve notice upon the owner of such right-of-way easement and, if filed of record, successors in interest and upon any party in possession of the real estate. The written notice shall accurately describe the real estate and easement in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment or nonuse, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in the notice.

3. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication an affidavit shall not be required before publication. If an affidavit disputing the facts contained in the notice is not filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached and endorsed, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

4. Upon reversion of the easement, the landowner may require the pipeline company to remove any pipe or pipeline facility remaining on the property to the extent such removal is in accordance with the terms of the abandonment authority from the federal energy regulatory commission. Provisions of this chapter relating to damages shall apply when the pipeline is removed.

5. Unless otherwise agreed to in writing by the landowner and the pipeline company, if a pipeline right-of-way is abandoned for pipeline use, but the pipe is not removed from the right-of-way, the pipeline company shall remain subject to section 479A.28, shall remain responsible for the additional costs of subsequent tiling as provided for in

section 479A.26, shall mark the location of the line in response to a notice of proposed excavation in accordance with chapter 480, and shall remain subject to the damage provisions of this chapter in the event access to or excavation relating to the pipe is required. The landowner shall provide reasonable access to the pipeline in order to carry out the responsibilities of this subsection.

Section History: Recent form

99 Acts, ch 85, §6, 11; 2000 Acts, ch 1139, §3

#### **479A.28 Farmland improvements.**

A landowner or contractor may require a representative of the pipeline company to be present on site, at no charge to the landowner, at all times during each phase and separate activity related to a farmland improvement within fifty feet of either side of a pipeline. If the pipeline company and the landowner or contractor constructing the farmland improvement mutually agree that a representative of the pipeline company is not required to be present, the requirements of this section are waived in relation to the farmland improvement which would have otherwise made the requirements of this section applicable. A farmland improvement includes, but is not limited to, the terracing of farmland and tiling.

Section History: Recent form

2000 Acts, ch 1139, §4

Internal References

Referred to in § 479A.27

# APPENDIX III

**CHAPTER 479B HAZARDOUS LIQUID PIPELINES AND STORAGE FACILITIES**

479B.1 Purpose--authority..... 1  
 479B.2 Definitions. .... 1  
 479B.3 Conditions attending operation. .... 1  
 479B.4 Application for permit--informational meeting--notice..... 2  
 479B.5 Petition. .... 2  
 479B.6 Hearing--notice..... 3  
 479B.7 Objections. .... 3  
 479B.8 Examination--testimony..... 3  
 479B.9 Final order--condition. .... 4  
 479B.10 Costs and fees. .... 4  
 479B.11 Inspection fee..... 4  
 479B.12 Use of funds. .... 4  
 479B.13 Financial condition of permittee--bond..... 4  
 479B.14 Permits--limitations--sale or transfer--records--extension. .... 4  
 479B.15 Entry for land surveys. .... 5  
 479B.16 Eminent domain. .... 5  
 479B.17 Damages..... 6  
 479B.18 Venue..... 6  
 479B.19 Orders--enforcement..... 6  
 479B.20 Land restoration standards. .... 6  
 479B.21 Civil penalty. .... 8  
 479B.22 Rehearing--judicial review..... 8  
 479B.23 Authorized federal aid. .... 8  
 479B.24 Cancellation. .... 8  
 479B.25 Arbitration agreements..... 9  
 479B.26 Subsequent pipeline or underground storage facility. .... 9  
 479B.27 Damage agreement. .... 9  
 479B.28 Negotiated fee..... 9  
 479B.29 Particular damage claims..... 10  
 479B.30 Determination of construction damages..... 10  
 479B.31 Subsequent tiling..... 12  
 479B.32 Reversion on nonuse. .... 12  
 479B.33 Farmland improvements. .... 13

**479B.1 Purpose--authority.**

It is the purpose of the general assembly in enacting this law to grant the utilities board the authority to implement certain controls over hazardous liquid pipelines to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a hazardous liquid pipeline or underground storage facility within the state, to approve the location and route of

hazardous liquid pipelines, and to grant rights of eminent domain where necessary.

Section History: Recent form

95 Acts, ch 192, §28

**479B.2 Definitions.**

As used in this chapter, unless the context appears otherwise:

1. "Board" means the utilities board within the utilities division of the department of commerce.
2. "Hazardous liquid" means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.
3. "Pipeline" means an interstate pipe or pipeline and necessary appurtenances used for the transportation or transmission of hazardous liquids.
4. "Pipeline company" means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the transportation or transmission of any hazardous liquid or underground storage facilities for the underground storage of any hazardous liquid.
5. "Underground storage" means storage of hazardous liquid in a subsurface stratum or formation of the earth.
6. "Utilities division" means the utilities division of the department of commerce.

Section History: Recent form

95 Acts, ch 192, §29

**479B.3 Conditions attending operation.**

A pipeline company shall not construct, maintain, or operate a pipeline or underground storage facility under, along, over, or across any public or private highways, grounds, waters, or streams of any kind in this state except in accordance with this chapter.

Section History: Recent form

95 Acts, ch 192, §30

**479B.4 Application for permit-- informational meeting--notice.**

A pipeline company doing business in this state shall file a verified petition with the board asking for a permit to construct, maintain, and operate a new pipeline along, over, or across the public or private highways, grounds, waters, and streams of any kind in this state. Any pipeline company now owning or operating a pipeline or underground storage facility in this state shall be issued a permit by the board upon supplying the information as provided for in section 479B.5, subsections 1 through 5, and meeting the requirements of section 479B.13.

A pipeline company doing business in this state and proposing to store hazardous liquid underground within this state shall file with the board a verified petition asking for a permit to construct, maintain, and operate facilities for the underground storage of hazardous liquid which includes the construction, placement, maintenance, and operation of machinery, appliances, fixtures, wells, pipelines, and stations necessary for the construction, maintenance, and operation of the underground storage facilities.

The pipeline company shall hold informational meetings in each county in which real property or property rights will be affected at least thirty days prior to filing the petition for a new pipeline. A member of the board, or a person designated by the board, shall serve as the presiding officer at each meeting and present an agenda for the meeting which shall include a summary of the legal rights of the affected landowners. No formal record of the meeting shall be required. The meeting shall be held at a location reasonably accessible to all persons who may be affected by granting the permit.

The pipeline company seeking the permit for a new pipeline shall give notice of the informational meeting to each landowner affected by the proposed project and each person in possession of or residing on the

property. For the purposes of the informational meeting, "landowner" means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and "pipeline" means a line transporting a hazardous liquid under pressure in excess of one hundred fifty pounds per square inch and extending a distance of not less than five miles or having a future anticipated extension of an overall distance of five miles.

The notice shall set forth the following: the name of the applicant, the applicant's principal place of business, the general description and purpose of the proposed project, the general nature of the right-of-way desired, a map showing the route or location of the proposed project, that the landowner has a right to be present at the meeting and to file objections with the board, and a designation of the time and place of the meeting. The notice shall be sent by restricted certified mail and shall be published once in a newspaper of general circulation in the county not less than thirty days before the date set for the meeting. The publication shall be considered notice to landowners whose residence is not known and to each person in possession of or residing on the property provided a good faith effort to notify can be demonstrated by the pipeline company.

A pipeline company seeking rights under this chapter shall not negotiate or purchase an easement or other interest in land in a county known to be affected by the proposed project prior to the informational meeting.

Section History: Recent form

95 Acts, ch 192, §31

Internal References

Referred to in § 479B.15

**479B.5 Petition.**

A petition for a permit shall state all of the following:

1. The name of the individual, firm, corporation, company, or association applying for the permit.
2. The applicant's principal office and place of business.
3. A legal description of the route of the proposed pipeline and a map of the route.
4. A general description of the public or private highways, grounds, waters, streams, and private lands of any kind along, over, or across which the proposed pipeline will pass.
5. If permission is sought to construct, maintain, and operate facilities for the underground storage of hazardous liquids the petition shall include the following additional information:
  - a. A description and a map of the public or private highways, grounds, waters, streams, and private lands of any kind under which the storage is proposed.
  - b. Maps showing the location of proposed machinery, appliances, fixtures, wells, and stations necessary for the construction, maintenance, and operation of the hazardous liquid storage facilities.
6. The possible use of alternative routes.
7. The relationship of the proposed project to the present and future land use and zoning ordinances.
8. The inconvenience or undue injury which may result to property owners as a result of the proposed project.
9. An affidavit attesting to the fact that informational meetings were held in each county affected by the proposed project and the time and place of each meeting.

Section History: Recent form

95 Acts, ch 192, §32

Internal References

Referred to in § 479B.4, 479B.14

#### **479B.6 Hearing--notice.**

After the petition is filed, the board shall fix a date for a hearing and shall publish notice for two consecutive weeks, in a newspaper of general circulation in each county through which the proposed pipeline or hazardous liquid storage facilities will extend.

The hearing shall not be less than ten days nor more than thirty days from the date of the last publication of the notice. If the pipeline exceeds five miles in length, the hearing shall be held in the county seat of the county located at the midpoint of the proposed pipeline or the county in which the proposed hazardous liquid storage facility would be located.

Section History: Recent form

95 Acts, ch 192, §33

#### **479B.7 Objections.**

A person, including a governmental entity, whose rights or interests may be affected by the proposed pipeline or hazardous liquid storage facilities may file written objections.

All objections shall be on file with the board not less than five days before the date of hearing on the application. However, the board may permit the filing of the objections later than five days before the hearing, in which event the applicant must be granted a reasonable time to meet the objections.

Section History: Recent form

95 Acts, ch 192, §34

#### **479B.8 Examination--testimony.**

The board may examine the proposed route of the pipeline and location of the underground storage facility. At the hearing the board shall consider the petition and any objections and may hear testimony to assist the board in making its determination regarding the application.

Section History: Recent form

95 Acts, ch 192, §35

**479B.9 Final order--condition.**

The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper. A permit shall not be granted to a pipeline company unless the board determines that the proposed services will promote the public convenience and necessity.

Section History: Recent form

95 Acts, ch 192, §36

**479B.10 Costs and fees.**

The applicant shall pay all costs of the informational meetings, hearing, and necessary preliminary investigation including the cost of publishing notice of hearing, and shall pay the actual unrecovered costs directly attributable to inspections conducted by the board.

Section History: Recent form

95 Acts, ch 192, §37

**479B.11 Inspection fee.**

If the board enters into agreements with the United States department of transportation pursuant to section 479B.23, a pipeline company shall pay an annual fee of fifty cents per mile of pipeline or fraction thereof for each inch of diameter of the pipeline located in the state. The inspection fee shall be paid to the board between January 1 and February 1 for the calendar year.

The board shall collect all fees. Failure to pay any fee within thirty days from the due date shall be grounds for revocation of the permit or assessment of civil penalties.

Section History: Recent form

95 Acts, ch 192, §38

**479B.12 Use of funds.**

All moneys received under this chapter, other than civil penalties collected pursuant to section 479B.21, shall be remitted

monthly to the treasurer of state and credited to the general fund of the state.

Section History: Recent form

95 Acts, ch 192, §39

**479B.13 Financial condition of permittee--bond.**

Before a permit is granted under this chapter the applicant must satisfy the board that the applicant has property within this state other than pipelines or underground storage facilities, subject to execution of a value in excess of two hundred fifty thousand dollars, or the applicant must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dollars with surety approved by the board, conditioned that the applicant will pay any and all damages legally recovered against it growing out of the construction, maintenance, or operation of its pipeline or underground storage facilities in this state. When the pipeline company deposits with the board security satisfactory to the board as a guaranty for the payment of the damages, or furnishes to the board satisfactory proofs of its solvency and financial ability to pay the damages, the pipeline company is relieved of the provisions requiring bond.

Section History: Recent form

95 Acts, ch 192, §40

Internal References

Referred to in § 479B.4, 479B.14

**479B.14 Permits--limitations--sale or transfer--records--extension.**

The board shall prepare and issue permits. The permit shall show the name and address of the pipeline company to which it is issued and identify the decision and order of the board under which the permit is issued. The permit shall be signed by the chairperson of the board and the official seal of the board shall be affixed to it.

The board shall not grant an exclusive right to any pipeline company to construct,

maintain, or operate its pipeline along, over, or across any public or private highway, grounds, waters, or streams. The board shall not grant a permit for longer than twenty-five years.

A permit shall not be sold until the sale is approved by the board.

If a transfer of a permit is made before the construction for which it was issued is completed in whole or in part, the transfer shall not be effective until the pipeline company to which it was issued files with the board a notice in writing stating the date of the transfer and the name and address of the transferee.

The board shall keep a record of all permits granted by it, showing when and to whom granted and the location and route of the pipeline or underground storage facility, and if the permit has been transferred, the date and the name and address of the transferee.

A pipeline company may petition the board for an extension of a permit granted under this section by filing a petition containing the information required by section 479B.5, subsections 1 through 5, and meeting the requirements of section 479B.13.

Section History: Recent form

95 Acts, ch 192, §41

**479B.15 Entry for land surveys.**

After the informational meeting or after the filing of a petition if no informational meeting is required, a pipeline company may enter upon private land for the purpose of surveying and examining the land to determine direction or depth of pipelines by giving ten days' written notice by restricted certified mail to the landowner as defined in section 479B.4 and to any person residing on or in possession of the land. The entry for land surveys shall not be deemed a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry, survey, and examination.

Section History: Recent form

95 Acts, ch 192, §42

**479B.16 Eminent domain.**

A pipeline company granted a pipeline permit shall be vested with the right of eminent domain, to the extent necessary and as prescribed and approved by the board, not exceeding seventy-five feet in width for right-of-way and not exceeding one acre in any one location in addition to right-of-way for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline. The board may grant additional eminent domain rights where the pipeline company has presented sufficient evidence to adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline.

A pipeline company granted a permit for underground storage of hazardous liquid shall be vested with the right of eminent domain to the extent necessary and as prescribed and approved by the board in order to appropriate for its use for the underground storage of hazardous liquid any subsurface stratum or formation in any land which the board shall have found to be suitable and in the public interest for the underground storage of hazardous liquid, and may appropriate other interests in property, as may be required adequately to examine, prepare, maintain, and operate the underground storage facilities.

This chapter does not authorize the construction of a pipeline longitudinally on, over, or under any railroad right-of-way or public highway, or at other than an approximate right angle to a railroad track or public highway without the consent of the railroad company, the state department of transportation, or the county board of supervisors, and this chapter does not authorize or give the right of condemnation or eminent domain for such purposes.

Section History: Recent form

95 Acts, ch 192, §43

**479B.17 Damages.**

A pipeline company operating a pipeline or an underground storage facility shall have reasonable access to the pipeline or underground storage facility for the purpose of constructing, operating, maintaining, or locating pipes, pumps, pressure apparatus, or other stations, wells, devices, or equipment used in or upon the pipeline or underground storage facility. A pipeline company shall pay the owner of the land for the right of entry and the owner of crops for all damages caused by entering, using, or occupying the lands and shall pay to the owner all damages caused by the completion of construction of the pipeline due to wash or erosion of the soil at or along the location of the pipeline and due to the settling of the soil along and above the pipeline. However, this section does not prevent the execution of an agreement between the pipeline company and the owner of the land or crops with reference to the use of the land.

Section History: Recent form

95 Acts, ch 192, §44, 62

**479B.18 Venue.**

In all cases arising under this chapter, the district court of any county in which property of a pipeline company is located has jurisdiction of a case involving the pipeline company.

Section History: Recent form

95 Acts, ch 192, §45

**479B.19 Orders--enforcement.**

If the pipeline company fails to obey an order within the period of time determined by the board, the board may commence an equitable action in the district court of the county where the pipeline, device, apparatus, equipment, or underground storage facility is located to compel compliance with its order. If, after trial, the court finds that the order is reasonable, equitable, and just, the court shall decree a mandatory injunction compelling obedience

to and compliance with the order and may grant other relief as may be just and proper. Appeal from the decree may be taken in the same manner as in other actions.

Section History: Recent form

95 Acts, ch 192, §46

**479B.20 Land restoration standards.**

1. The board, pursuant to chapter 17A, shall adopt rules establishing standards for the restoration of agricultural lands during and after pipeline or underground storage facility construction. In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rulemaking proceedings, petition under those provisions for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

- a. Topsoil separation and replacement.
- b. Temporary and permanent repair to drain tile.
- c. Removal of rocks and debris from the right-of-way.
- d. Restoration of areas of soil compaction.
- e. Restoration of terraces, waterways, and other erosion control structures.
- f. Revegetation of untilled land.
- g. Future installation of drain tile or soil conservation structures.
- h. Restoration of land slope and contour.

i. Restoration of areas used for field entrances and temporary roads.

j. Construction in wet conditions.

k. Designation of a pipeline company point of contact for landowner inquiries or claims.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A licensed professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be responsible for the inspection. A county board of supervisors may contract for the services of a licensed professional engineer for the purposes of the inspection. The reasonable costs of the inspection shall be paid by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration or line location executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of the pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan or line location, or with an independent agreement on land restoration executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties under section 479B.21.

6. The pipeline company shall allow landowners and the inspector to view the proposed center line of the pipeline prior to commencing trenching operations to ensure that construction takes place in its proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted pursuant to this chapter, the land restoration plan, or the terms of an independent agreement with the pipeline company regarding land restoration or line location executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

8. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspectors' responsibility to require construction conforming with the standards provided by this chapter.

9. Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met. The company shall provide copies of the plan to all landowners of property that will be disturbed by the construction.

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted under this section, or in the land restoration plan, if the alternative provisions are contained in agreements independently executed by the pipeline company and the

landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.

11. For the purposes of this section, "construction" includes the removal of a previously constructed pipeline.

12. The requirements of this section shall apply only to pipeline construction projects commenced on or after June 1, 1999.

Section History: Recent form

95 Acts, ch 192, §47; 99 Acts, ch 85, §7, 11

**479B.21 Civil penalty.**

A person who violates this chapter or any rule or order issued pursuant to this chapter shall be subject to a civil penalty levied by the board in an amount not to exceed one thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations. Civil penalties collected pursuant to this section shall be credited to and are appropriated for the use of the Iowa energy center created in section 266.39C.

A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the pipeline company charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

Section History: Recent form

95 Acts, ch 192, §48

Internal References

Referred to in § 479B.12, 479B.20

**479B.22 Rehearing--judicial review.**

Rehearing procedure for any person aggrieved by actions of the board under this chapter shall be as provided in section 476.12. Judicial review may be sought in accordance with the terms of chapter 17A.

Section History: Recent form

95 Acts, ch 192, §49

**479B.23 Authorized federal aid.**

The board may enter into agreements with and receive moneys from the United States department of transportation for the inspection of pipelines to determine compliance with applicable standards of pipeline safety, and for enforcement of the applicable standards of pipeline safety as provided by 49 U.S.C. § 60101 et seq.

Section History: Recent form

95 Acts, ch 192, §50

Internal References

Referred to in § 479B.11

**479B.24 Cancellation.**

A pipeline company seeking to acquire an easement or other property interest for the construction, maintenance, or operation of a pipeline or underground storage facility shall do all of the following:

1. Allow the landowner or a person serving in a fiduciary capacity on the landowner's behalf to cancel an agreement granting an easement or other interest by restricted certified mail to the pipeline company's principal place of business if received by the pipeline company within seven days, excluding Saturday and Sunday, of the date of the agreement and inform the landowner or the fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or the fiduciary.

2. Provide the landowner or a person serving in a fiduciary capacity in the landowner's behalf with a form in duplicate for the notice of cancellation.

3. Not record an agreement until after the period for cancellation has expired.

4. Not include in the agreement a waiver of the right to cancel in accordance with this section. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each pipeline project.

Section History: Recent form

95 Acts, ch 192, §51

**479B.25 Arbitration agreements.**

If an easement or other written agreement between a landowner and a pipeline company provides for the determination through arbitration of the amount of monetary damages sustained by a landowner and caused by the construction, maintenance, or repair of a pipeline or underground storage facility, and if either party has not appointed its arbitrator or agreed to an arbitrator under the agreement within thirty days after the other party has invoked the arbitration provisions of the agreement by written notice to the other party by restricted certified mail, the landowner or the pipeline company may petition a magistrate in the county where the real property is located for the appointment of an arbitrator to serve in the stead of the arbitrator who would have been appointed or agreed to by the other party. Before filing the petition the landowner or pipeline company shall give notice of the petitioning of the magistrate by restricted certified mail to the other party and file proof of mailing with the petition.

If after hearing, the magistrate finds that the landowner or pipeline company has not been diligent in appointing or reasonable in agreeing to an arbitrator, the magistrate shall appoint an impartial arbitrator who shall have all of the powers and duties of an arbitrator appointed or agreed to by the other party under the agreement.

For purposes of this section only, "landowner" means the person who signed the easement or other written agreement, or the person's heirs, successors, and assigns.

Section History: Recent form

95 Acts, ch 192, §52, 62

**479B.26 Subsequent pipeline or underground storage facility.**

A pipeline company shall not construct a subsequent pipeline or underground storage facility upon its existing easement when a damage claim from the installation of its previous pipeline on that easement has not been resolved unless that claim is under litigation or arbitration, or is the subject of a proceeding pursuant to section 479B.30.

With the exception of claims for damage to drain tile and future crop deficiency, for this section to apply, landowners and tenants must submit their claims in writing for damages caused by construction of the pipeline or underground storage facility within one year of final cleanup on the real property by the pipeline company.

Section History: Recent form

95 Acts, ch 192, §53

**479B.27 Damage agreement.**

A pipeline company shall not construct a pipeline or underground storage facility until a written statement is on file with the board as to how damages resulting from the construction of the pipeline shall be determined and paid, except in cases of eminent domain. The pipeline company shall provide a copy of the statement to the landowner.

Section History: Recent form

95 Acts, ch 192, §54

**479B.28 Negotiated fee.**

In lieu of a one-time lump sum payment for an easement or other property interest allowing a pipeline to cross property or

allowing underground storage of hazardous liquids, a landowner and the pipeline company may negotiate an annual fee, to be paid over a fixed number of years. Unless the easement provides otherwise, the annual fee shall run with the land and shall be payable to the owner of record.

Section History: Recent form

95 Acts, ch 192, §55

**479B.29 Particular damage claims.**

1. Compensable losses shall include, but are not limited to, all of the following:
  - a. Loss or reduced yield of crops or forage on the pipeline right-of-way, whether caused directly by construction or from disturbance of usual farm operations.
  - b. Loss or reduced yield of crops or yield from land near the pipeline right-of-way resulting from lack of timely access to the land or other disturbance of usual farm operations, including interference with irrigation.
  - c. Fertilizer, lime, or organic material applied by the landowner to restore land disturbed by construction to full productivity.
  - d. Loss of or damage to trees of commercial or other value that occurs at the time of construction, restoration, or at the time of any subsequent work by the pipeline company.
  - e. The cost of or losses in moving or relocating livestock, and the loss of gain by or the death or injury of livestock caused by the interruption or relocation of normal feeding.
  - f. Erosion on lands attributable to pipeline construction.
  - g. Damage to farm equipment caused by striking a pipeline, debris, or other material reasonably associated with pipeline construction while engaged in normal farming operations as defined in section 480.1.

2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the pipeline company in writing fourteen days prior to harvest in each year to assess crop deficiency.

Section History: Recent form

95 Acts, ch 192, §56, 62; 99 Acts, ch 85, §8, 11

**479B.30 Determination of construction damages.**

1. The county board of supervisors shall determine when construction of a pipeline or underground storage facility has been completed in that county for the purposes of this section. Not less than ninety days after the completion of construction and if an agreement cannot be made as to damages, a landowner whose land was affected by the construction of the pipeline or underground storage facility or the pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from construction of the pipeline.
2. If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district for the county for the appointment of a compensation commission as provided in section 6B.4. The application shall contain all of the following information:
  - a. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.
  - b. A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.
  - c. The name and address of the pipeline company claimed to have caused the

damage or the name and address of the affected landowner.

3. After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating all of the following:

a. That a compensation commission has been appointed to determine the damages caused by the construction of the pipeline or underground storage facility.

b. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

c. The date, time, and place when the commissioners will view the premises and proceed to appraise the damages and that the pipeline company or landowner may appear before the commissioners.

If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisal of damages shall be consolidated into one application, notice, and appraisal. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the construction of the pipeline or underground storage facility and they shall file their report with the sheriff. The appraisal of damages returned by the commissioners is final unless appealed. After the appraisal of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisal of damages was made, the amount of the appraisal, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisal of damages. At the time of appeal, the appealing party shall give written

notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages; if the award does not exceed one hundred ten percent, the landowners shall pay the fees and costs incurred by the pipeline company. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, "damages" means compensation for damages to the land, crops, and other personal property caused by the construction of a pipeline and its attendant structures or underground storage facility but does not include compensation for a property interest, and "landowner" includes a farm tenant.

8. The provisions of this section do not apply if the easement provides for any other means of negotiation or arbitration.

Section History: Recent form

95 Acts, ch 192, §57, 62; 2000 Acts, ch 1179, §28, 30

Internal References

Referred to in § 479B.26

**479B.31 Subsequent tiling.**

All additional costs of new tile construction caused by an existing pipeline or underground storage facility shall be paid by the pipeline company. To receive compensation under this section, the landowner or agent of the landowner shall either present an invoice specifying the additional costs caused by the presence of the pipeline which is accompanied by a written verification of the additional costs by the county engineer or soil and water conservation district conservationist or reach an agreement with the pipeline company on the project design and share of the cost to be paid by the pipeline company during the planning of the tiling project.

Section History: Recent form

95 Acts, ch 192, §58, 62

Internal References

Referred to in §479B.32

**479B.32 Reversion on nonuse.**

1. If a pipeline right-of-way, or any part of the pipeline right-of-way, is wholly abandoned for pipeline purposes by the relocation of the pipeline, is not used or operated for a period of five consecutive years, or if the construction of the pipeline has been commenced and work has ceased and has not in good faith resumed for five years, the right-of-way may revert as provided in this section to the person who, at the time of the abandonment or nonuse, is the owner of the tract from which such right-of-way was taken. For purposes of this section, a pipeline or a pipeline right-of-way is not considered abandoned or unused if it is transporting product or is being actively maintained with reasonable anticipation of a future use.

2. To effect a reversion on nonuse of right-of-way, the owner or holder of purported fee title to such real estate shall serve notice upon the owner of such right-of-way easement and, if filed of record, successors in interest and upon any party in possession of the real estate. The written notice shall accurately describe the real estate and

easement in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment or nonuse, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in the notice.

3. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication an affidavit shall not be required before publication. If an affidavit disputing the facts contained in the notice is not filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached and endorsed, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

4. Upon reversion of the easement, the landowner may require the pipeline company to remove any pipe or pipeline facility remaining on the property. Provisions of this chapter relating to damages shall apply when the pipeline is removed.

5. Unless otherwise agreed to in writing by the landowner and the pipeline company, if a pipeline right-of-way is abandoned for pipeline use, but the pipe is not removed from the right-of-way, the pipeline company shall remain subject to section 479B.33, shall remain responsible for the additional costs of subsequent tiling as provided for in section 479B.31, shall mark the location of the line in response to a notice of proposed excavation in accordance with chapter 480, and shall remain subject to the damage provisions of this chapter in the event access to or excavation relating to the pipe is required. The landowner shall provide reasonable access to the pipeline in order to carry out the responsibilities of this subsection.

Section History: Recent form

99 Acts, ch 85, §9, 11; 2000 Acts, ch 1139, §5

**479B.33 Farmland improvements.**

A landowner or contractor may require a representative of the pipeline company to be present on site, at no charge to the landowner, at all times during each phase and separate activity related to a farmland improvement within fifty feet of either side of a pipeline. If the pipeline company and the landowner or contractor constructing the farmland improvement mutually agree that a representative of the pipeline company is not required to be present, the requirements of this section are waived in relation to the farmland improvement which would have otherwise made the requirements of this section applicable. A farmland improvement includes, but is not limited to, the terracing of farmland and tiling.

Section History: Recent form

2000 Acts, ch 1139, §6

Internal References

Referred to in § 479B.32

# APPENDIX IV

PIPELINES; COMMERCE COMMISSION; DRAINAGE DISTRICTS. Chapter 455, §§ 455.1, 455.199(1); Chapter 479, §§ 479.1, 479.29(1), The Code 1981. Federal law (Natural Gas Pipeline Safety Act of 1968 and Alaska Natural Gas Transportation Act of 1976) totally preempt state law with respect to regulation of interstate gas pipelines. Sections 455.199(1) and 479.29(1) are constitutionally valid, but subordinate to preemptive federal law. Section 479.29(1) prevails over § 455.199(1). County home rule amendment does not give county authority to enforce ordinance inconsistent with state law. (Ewald to Craft, State Senator, 8/6/81) #81-8-4 (L)

The Honorable Rolf V. Craft  
State Senator  
R.R. #4  
Decorah, Iowa 52101

August 6, 1981

Dear Senator Craft:

You have requested the Attorney General's opinion concerning the authority of counties to adopt standards for the laying of pipeline which are more stringent than those required by the Natural Gas Pipeline Safety Act. You also ask whether this federal law conflicts with certain state laws, and whether those state laws conflict with each other.

Your first question is as follows:

Is federal legislation (specifically the Natural Gas Pipeline Safety Act) pre-emptive over any additional or more stringent standards that may be adopted by the state or counties?

The Natural Gas Pipeline Safety Act of 1968 (Safety Act) reads, in pertinent part, as follows:

[T]he Secretary shall, by order, establish minimum Federal safety standards for the transportation of gas and pipeline facilities. . . . Any state agency may adopt such additional or more stringent standards for pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act as are not incompatible with the Federal minimum standards, but may not adopt or continue in force. . . any such standards applicable to interstate transmission facilities. 49 U.S.C. § 1672(b) (1968).

The Honorable Rolf V. Craft  
State Senator  
Page Two

The legislative history of the Safety Act makes it clear that Congress intended to avoid dual safety regulation of interstate transmission facilities:

The relationship of Federal-State regulatory authority created by this bill differs as between local pipelines and interstate transmission lines. In the latter area, the lines of a single transmission company may traverse a number of States and uniformity of regulation is a desirable objective. For this reason, section 3 provides for a Federal preemption in the case in interstate transmission lines.

On the other hand, in the case of local lines exempted from the economic regulatory authority of the Federal Power Commission under the Natural Gas Act, States may establish additional or ore stringent standards, provided they are not inconsistent with the Federal minimum standards. The committee has provided for this different treatment because each State authority is uniquely equipped to know best the special aspects of local pipeline safety, which are particularly applicable to that community.

3 U.S. Cong. Admin. News, 1968 at page 3241.

The constitutional basis for federal preemption with respect to interstate pipelines is the commerce clause, U.S. Const., art. I, § 8, and the supremacy clause, U.S. Const., art VI. The validity of the preemption doctrine and the federal law in question is not challenged.

In United Gas Pipeline Company v. Terrebonne Parish Policy Jury, 319 F.Supp. 1138 (E.D.La. 1970), aff'd, 445 F.2d 301 (5<sup>th</sup> Cir. 1971), a parish ordinance regulating the construction, installation and operation of pipelines was challenged. The U.S. District Court held that, “[a]s applied to interstate transmission pipelines, the Safety Act must prevail over and preempt any state or state political sub-division law, ordinance or similar mandate.” 319 F.Supp. at 1139. The Court of Appeals affirmed, but implied that the parish could enact a valid ordinance requiring permits with reasonable conditions. 445 F.2d at 302.

In Tenneco, Inc. v. Public Service Commission of West Virginia, 352 F.Supp. 719 (S.D.W.Va. 1973), aff'd, 489 F.2d 334 (4<sup>th</sup> Cir. 1973), the court recognized Congress’ clear attempt in the Safety Act to develop a cooperative program with the states for gas pipeline safety administration. The court upheld a West Virginia statute which assessed fees against interstate lines to help defray the cost of administering the safety program. The statute was not unconstitutional because it

The Honorable Rolf V. Craft  
State Senator  
Page Three

did not conflict with the safety provisions of the Safety Act. 352 F.Supp. at 722; 489 F.2d at 335, 337.

More recently and closer to home, in Northern Border Pipeline Company v. Jackson County, Minnesota, 512 F. Supp. 1261 (D.Minn. 1981), the court held that the Safety Act preempts the entire field of gas pipeline safety. Id. at 1264. Its legislative history indicates that Congress unmistakably ordained that federal law preempts state law. Id. at 1265. Thus, a Minnesota county is without authority to regulate cover requirements for interstate pipelines which are part of the Alaska Natural Gas Transportation System established under the Alaska Natural Gas Transportation Act (ANGTA), 15 U.S.C. § 719 et seq. (1976). 512 F.Supp. at 1266.

Similarly, in Federal Energy Regulatory Commission v. Public Service Commission of North Dakota, 513 F.Supp. 654 (D.N.D. 1981), it was held that North Dakota statutes, insofar as they conflict with routing and construction provisions of ANGTA, must yield to overriding federal law. Id. at 656. The court found that the Act, as a whole, described “a pervasive scheme of federal regulation directed to every aspect of this unique pipeline, . . .” Id.

We agree with the holdings in these two 1981 cases. We conclude that interstate gas pipelines subject to the safety regulations of the Safety Act or ANGTA are exempt from state and local regulation. With respect to intrastate pipelines, states may adopt additional or more stringent standards only if they are not incompatible with federal minimum standards.

We also call to your attention the Hazardous Liquid Pipeline Safety Act, 49 U.S.C. § 2001 et seq. (1979). This Act establishes minimum federal safety standards for the transportation of hazardous liquids (excluding liquefied natural gas) and pipeline facilities. Like the Safety Act, it differentiates between intrastate and interstate pipeline facilities:

Any State agency may adopt additional or more stringent safety standards for intrastate pipeline facilities and the transportation of hazardous liquids associated with such facilities, if such standards are compatible with the Federal standards issued under this chapter. No state agency may adopt or continue in force any safety standards applicable to interstate pipeline facilities or the transportation of hazardous liquids associated with such facilities.

49 U.S.C. § 2002(d) (1979).

Your second question now reads:

Given that federal legislation is pre-emptive, are Sections 455.199(1) and 479.29(1), Code of Iowa 1981, in conflict with federal legislation?

The two statutes are set out, in pertinent part, below:

When any person proposes to construct a pipeline, electric transmission line, communication line, underground service line, or other similar installations on, over, across, or beneath the right of way of any drainage or levee district, such person shall, before beginning construction, obtain from the drainage or levee district an easement to cross the district's right of way. The governing body of the district shall require such person to agree to comply with subsection 3 of this section and may, as a condition of granting such easement, attach thereto such additional conditions as they deem necessary.

§ 455.199(1), The Code 1981.

The [Commerce Commission] shall, pursuant to chapter 17A, adopt rules establishing standards for the protection of underground improvements during the construction of pipelines, to protect soil conservation and drainage structures from being permanently damaged by pipeline and for the restoration of agricultural lands after pipeline construction. \* \* \* Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rule-making proceedings, petition under those provisions for additional rule making to establish standards to protect soil conservation practices, structures and drainage structures within that county. \* \* \*

§ 455.199(1), The Code 1981.

Section 455.199(1) authorizes drainage districts to attach necessary conditions before granting an easement for a pipeline to cross the district's right of way. Section 479.29(1) authorizes the Commerce Commission to establish standards for pipeline construction. On the other hand, we have concluded above that federal law is totally preemptive with respect to interstate pipelines, and partially preemptive with respect to intrastate pipelines.

The Honorable Rolf V. Craft  
State Senator  
Page Five

Thus, both state statutes would violate the United States Constitution if they were construed to authorize state or local governing bodies to regulate interstate pipeline safety, an area that has been explicitly preempted by federal legislation. And both would be unconstitutional if construed to permit states to regulate intrastate pipelines in a way incompatible with federal minimum standards.

However, all Iowa statutes are presumed to be in compliance with the United States Constitution. § 4.4(1), the Code 1981. They should, if reasonably possible, be construed to avoid unconstitutionality. State v. Sullivan, 298 N.W.2d 267 (Iowa 1980); State v. Rassmussen, 213 N.W.2d 661 (Iowa 1973); State v. Lavin, 204 N.W.2d 844 (Iowa 1973).

By construing both §§ 455.199(1) and 479.29(1) to apply to interstate and intrastate pipelines only to the extent that they do not conflict with preemptive federal legislation, we can reasonably avoid a finding of unconstitutionality.

In its rules, the Commerce Commission adopted the federal minimum safety standards as the minimum safety standards of the State of Iowa. 250 I.A.C. § 10.12(479). This is consistent with federal law and not violative of the preemption doctrine.

We conclude, then, that §§ 455.199(1) and 479.29(1) should be construed to be consistent with, yet subordinate to, the Safety Act and ANGTA, with respect to interstate and intrastate pipeline safety. Given this construction, we find no conflict among the state laws, Commerce Commission rules, and federal pipeline legislation.

Your final question reads:

Is there a conflict between section 455.199(1)  
and Section 479.29(1)?

Our conclusions above substantially moot this question with respect to interstate gas pipeline regulation, since both statutes are federally preempted.

However, disregarding federal preemption, several principles of statutory construction appear to be relevant. One is that unless statutes are in direct conflict, they will be read together and, if possible, harmonized. Hardwick v. Bublitz, 253 Iowa 49, 111 N.W.2d 304 (1962). Another states that if the statutes cannot be harmonized, the more specific provision prevails over the more general. § 4.8, The Code 1981.

Chapter 455 deals with levee and drainage districts. It authorizes counties to:

establish . . . drainage districts, and . . . levees, and cause to be constructed . . . any levee, ditch, drain, or watercourse, or settling basins, . . . or to straighten, widen, deepen, or change any natural watercourse, in such county, whenever the same will be of public utility or conducive to the public health, convenience and welfare.

Section 455.1, The Code 1981.

Subsection 455.199(1) concerns easements through drainage districts, with respect to construction of pipelines, underground service lines, or other similar installations. It was enacted in 1969 and amended in 1970. 1969 Session 63<sup>rd</sup>. G.A., ch. 260, § 21; 1970 Session, 63<sup>rd</sup> G.A., ch. 1219, § 1.

Chapter 479 deals specifically with pipelines and underground gas storage. It confers upon the Commerce Commission:

The power and authority to supervise the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state by pipeline, whether specifically mentioned herein or not, and the power and authority to supervise the underground storage of gas, so as to protect the safety and welfare of the public in its use of any public or private highways, grounds, waters and stream of any kind in this state.

§ 479.1, The Code 1981. Section 479.29(1) specifically authorizes the Commerce Commission to adopt rules establishing safety standards for pipeline construction. It also provides specific procedures by which counties may participate in rulemaking.

Section 479.29 was enacted in 1979. 1979 Session, 68<sup>th</sup> G.A., ch. 118, § 4. Chapter 479 was extensively amended by the General Assembly in 1981. See 1981 Session, 69<sup>th</sup> G.A., Senate File 531. The amendments include numerous provisions relating to damage resulting from pipeline construction. See, e.g., the as yet unnumbered new sections of Chapter 479 relating to arbitration agreements, damage agreements, negotiated fees, particular damage claims, determination of installation damages, subsequent filing, financial condition of permittee—bond. See also the as yet unnumbered new subsections of § 479.29 relating to inspection and repair of damaged drain tile, and the additions to §§ 479.29(4) and (5) relating to topsoil replacement and inspection.

It appears to us that § 455.199(1) 479.29(1) can be harmonized. Looking at those subsections and the sections and chapters of which they are a part, we see that § 455.199(1) was intended primarily as a means to protect certain proprietary

The Honorable Rolf V. Craft  
State Senator  
Page Seven

interests of drainage districts. Section 479.29(1), on the other hand, is an integral part of a chapter intended by the legislature to govern pipeline construction. Peffer v. City of Des Moines, 299 N.W.2d 675 (Iowa 1980) (all parts of statute should be considered together); State v. Charlson, 261 Iowa 497, 154 N.W.2d 829 (Iowa 1967) (parts of statute should be interpreted in light of relation to whole). We conclude that, with respect to the regulation of gas pipelines, Chapter 479 and § 479.29(1) do not conflict with, but rather prevail over Chapter 455 and § 455.199(1).

Even if we were not able to thus harmonize the statutes by limiting each to its specific area of concern, and again disregarding federal preemption, application of the second and third principles mentioned above would readily reveal that, with respect to regulation of gas pipeline construction and damages resulting therefrom,

§ 479.29(1) is both more specific and more recently enacted than § 455.199(1); therefore, § 479.29(1) should prevail. See Northern Border Pipeline Company v. Jackson County, Minnesota, 512 F.Supp. 1261, 1264 (D.Minn. 1981) (to extent that conflict exists, latter more specific statute expressly exempting interstate pipelines from state and local regulation regulating cover controls over former, more general county zoning statute).

The County Home Rule Amendment to the Iowa Constitution does not affect this conclusion, inasmuch as it specifically provides that home rule power and authority may not be inconsistent with the laws of the General Assembly. Iowa Const. Amend. 37. See Bryan v. City of Des Moines, 261 N.W.2d 685, 687 (Iowa 1978) (state law limitations on city home rule power must be expressly imposed); Chelsea Theater Corporation v. City of Burlington, 258 N.W.2d 372, 373 (Iowa 1977) (state law preempts irreconcilable city home rule ordinance); Green v. City of Cascade, 231 N.W.2d 882, 890 (Iowa 1973) (same); Op.Att'yGen. #79-4-7 (county home rule power cannot be "inconsistent" with laws of General Assembly, as term is defined in Bryan, Chelsea, Green, supra; intent to vest exclusive subject matter jurisdiction in state may be implied from legislative history). Thus, a county could not enforce any ordinance inconsistent or irreconcilable, in this case, with Chapter 479, § 479.29, or any rules promulgated pursuant thereto. See 250 I.A.C. §§ 10.10 to 10.12 (479).

Yours truly,

/s/ Robert P. Ewald

ROBERT P. EWALD  
Assistant Attorney General

RPE:rcp

# APPENDIX V

CHAPTER 9  
RESTORATION OF AGRICULTURAL LANDS  
DURING AND AFTER PIPELINE CONSTRUCTION

**199—9.1(479,479A,479B) General information.**

**9.1(1) Authority.** The standards contained herein are prescribed by the Iowa utilities board pursuant to the authority granted to the board in Iowa Code sections 479.29, 479A.14, and 479B.20, relating to land restoration standards for pipelines. The requirements of this chapter do not apply to interstate natural gas pipeline projects that were both constructed between June 1, 1999, and July 1, 2000, and that also received a certificate from the Federal Energy Regulatory Commission prior to June 1, 1999. In addition, the requirements of this chapter do not apply to land located within city boundaries, unless the land is used for agricultural purposes.

**9.1(2) Purpose.** The purpose of this chapter is to establish standards for the restoration of agricultural lands during and after pipeline construction. Agricultural lands disturbed by pipeline construction shall be restored in compliance with these rules. The rules in this chapter shall constitute the minimum land restoration standards for any pipeline construction for which a project-specific plan is not required. When a project-specific land restoration plan is required, following notice and comment, the board may impose additional or more stringent standards as necessary to address issues specific to the nature and location of the particular pipeline project.

**9.1(3) Definitions.** The following words and terms, when used in these rules, shall have the meanings indicated below:

a. “*Agricultural land*” shall mean:

- (1) Land which is presently under cultivation, or
- (2) Land which has previously been cultivated and not subsequently developed for nonagricultural purposes, or
- (3) Cleared land capable of being cultivated.

b. “*Drainage structures*” or “*underground improvements*” means any permanent structure used for draining agricultural lands, including tile systems and buried terrace outlets.

c. “*Landowner*” means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property.

d. “*Pipeline*” means any pipe, pipes, or pipelines used for the transportation or transmission of any solid, liquid, or gaseous substance, except water, in intrastate or interstate commerce.

e. “*Pipeline company*” means any person, firm, copartnership, association, corporation, or syndicate engaged in or organized for the purpose of owning, operating, or controlling pipelines.

f. “*Pipeline construction*” means a substantial disturbance to agricultural land associated with installation, replacement, removal, operation or maintenance of a pipeline, but shall not include work performed during an emergency. Emergency means a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property. When the emergency condition ends, pipeline construction will be in accordance with these rules.

g. “*Proper notice*” to the county inspector means that the pipeline company or its contractor shall keep the person responsible for the inspection continually informed of the work schedule and any schedule changes, and shall provide at least 24 hours’ written notice before trenching, permanent tile repair, or backfilling is undertaken at any specific location. The pipeline company may request that the county inspector designate a person to receive such notices.

h. “*Soil conservation practices*” means any land conservation practice recognized by federal or state soil conservation agencies including, but not limited to, grasslands and grassed waterways, hay land planting, pasture, and tree plantings.

i. “*Soil conservation structures*” means any permanent structure recognized by federal or state soil conservation agencies including but not limited to toe walls, drop inlets, grade control works, terraces, levees, and farm ponds.

*j.* “Till” means to loosen the soil in preparation for planting or seeding by plowing, chiseling, discing, or similar means. For the purposes of this chapter, agricultural land planted using no-till planting practices is also considered tilled.

*k.* “Topsoil” means the upper part of the soil which is the most favorable material for plant growth and which can ordinarily be distinguished from subsoil by its higher organic content and darker color.

**199—9.2(479,479A,479B) Filing of land restoration plans.** For intrastate natural gas and all hazardous liquid pipeline projects, land restoration plans shall be prepared and filed with the appropriate petition pursuant to Iowa Code section 479.29(9) or 479B.20(9) and this chapter for pipeline construction projects which require a pipeline permit from the Iowa utilities board, or for amendments to permits that propose pipeline construction or relocation. Plans for interstate natural gas pipeline construction projects requiring a certificate from the Federal Energy Regulatory Commission shall be prepared pursuant to Iowa Code section 479A.14(9) and this chapter.

**9.2(1) Content of plan.** A land restoration plan shall include but not be limited to the following:

- a.* A brief description of the purpose and nature of the pipeline construction project.
- b.* A description of the sequence of events that will occur during pipeline construction.
- c.* A description of how compliance with subrules 9.4(1) to 9.4(10) will be accomplished.
- d.* The plan should include the point of contact for landowner inquiries or claims as provided for in rule 9.5(479,479A,479B).

**9.2(2) Plan variations.** The board may by waiver accept variations from this chapter in such plans if the pipeline company is able to satisfy the standards set forth in 199 IAC 1.3(17A,474,476) and if the alternative methods would restore the land to a condition as good as or better than provided for in this chapter.

**9.2(3) Environmental impact statement, environmental assessments, and agreements.** Preparation of a separate land restoration plan for an interstate natural gas company project subject to Federal Energy Regulatory Commission authority may be waived by the board if the requirements of Iowa Code section 479A.14 are substantively satisfied in an environmental impact statement or environmental assessment, as defined in 18 CFR Section 380.2, and as accepted and modified by the Federal Energy Regulatory Commission certificate issued for the project. Preparation of a separate land restoration plan may be waived by the board if an agricultural impact mitigation or similar agreement is reached by the pipeline company and the appropriate agencies of the state of Iowa and the requirements of this chapter are substantively satisfied therein. If an environmental impact statement, environmental assessment or agreement is used to fully or partially meet the requirements of a land restoration plan, the statement or agreement shall be filed with the board and shall be considered to be, or to be part of, the land restoration plan for purposes of this chapter.

**199—9.3(479,479A,479B) Procedure for review of plan.**

**9.3(1)** An intrastate natural gas pipeline, or a hazardous liquid pipeline, that is subject to Iowa Code section 479.5 or 479B.4 shall file its proposed plan with the board at the time it files its petition for permit pursuant to 199 IAC 10.2(479) or 13.2(479B), or a petition for amendment to permit which proposes pipeline construction or relocation pursuant to 199 IAC 10.9(2) or 13.9(479B). Review of the land restoration plan will be coincident with the board’s review of the application for permit, and objections to the proposed plan may be filed as part of the permit proceeding.

**9.3(2)** An interstate natural gas pipeline company that is required by rule 9.2(479,479A,479B) to file a land restoration plan shall file a proposed land restoration plan, or a petition requesting waiver of the plan filing requirement, with the board and the office of consumer advocate no later than 120 days prior to the date construction is scheduled to commence. If the pipeline company seeks waiver of the requirement that a plan be filed, and instead proposes board acceptance of a Federal Energy Regulatory Commission environmental impact statement or environmental assessment, or of an agricultural impact mitigation or similar agreement, the filing shall include a copy of that document. If the document is not final at the time filing is required, the most recent draft or a statement of the anticipated relevant contents shall be filed. If a Federal Energy Regulatory Commission environmental impact statement or environmental assessment information, final or draft, is filed, the filing shall identify the specific provisions which contain the subject matter required by Iowa Code section 479A.14(1).

*a.* Any interested person may file an objection on or before the twentieth day after the date the plan is filed.

*b.* Within 45 days of the filing of the plan or waiver request, the board will issue a decision on whether the filing demonstrates that the land restoration requirements of Iowa Code section 479A.14 and of these rules will be met. The board may impose terms and conditions if the filing is found to be incomplete or unsatisfactory. The board's action may also be conditional pending confirmation that the Federal Energy Regulatory Commission will not impose terms and conditions that are not consistent with the action taken by the board.

*c.* Interstate natural gas pipeline companies proposing pipeline construction requiring a Federal Energy Regulatory Commission certificate shall include a copy of 199—Chapter 9 in the notice mailed to affected landowners required by Federal Energy Regulatory Commission rule 18 CFR Part 157.6(d). Interstate natural gas pipeline companies proposing pipeline construction requiring a Federal Energy Regulatory Commission certificate shall also file the following with the board:

(1) A copy of the landowner notification required by Federal Energy Regulatory Commission rule 18 CFR Part 157.6(d), filed coincident with the mailing to landowners.

(2) Notice of any open public meeting with Iowa landowners scheduled by the company or by the Federal Energy Regulatory Commission.

(3) Copies of letters from Iowa landowners concerning the project filed with the Federal Energy Regulatory Commission, within 20 days of such filing.

(4) A copy of any agricultural impact mitigation or similar agreement reached with another state.

**9.3(3)** After the board has accepted the plan, but prior to construction, the pipeline company shall provide copies of the plan to all landowners of property that will be disturbed by the construction, and to the county board of supervisors and the county engineer of each affected county. However, if a waiver is granted pursuant to subrule 9.3(2), an interstate natural gas pipeline company need not provide landowners with second copies of environmental impact statements or environmental assessments if copies are provided to landowners by the Federal Energy Regulatory Commission.

### **199—9.4(479,479A,479B) Restoration of agricultural lands.**

#### **9.4(1) *Topsoil separation and replacement.***

*a. Removal.* Topsoil removal and replacement in accordance with this rule is required for any open excavation associated with the construction of a pipeline unless otherwise provided in these rules. The actual depth of the topsoil, not to exceed 36 inches, will first be stripped from the area to be excavated above the pipeline and, to a maximum of 12 inches, from the adjacent subsoil storage area. Topsoil shall also be removed and replaced in accordance with these rules at any location where land slope or contour is significantly altered to facilitate construction. A pipeline company shall, upon a landowner's request, measure topsoil depth at selected locations before and after construction.

*b. Soil storage.* The topsoil and subsoil shall be segregated, stockpiled, and preserved separately during subsequent construction operations. The stored topsoil and subsoil shall have sufficient separation to prevent mixing during the storage period. Topsoil shall not be used to construct field entrances or drives, or be otherwise removed from the property, without the written consent of the landowner. Topsoil shall not be stored or stockpiled at locations that will be used as a traveled way by construction equipment without the written consent of the landowner.

*c. Topsoil removal not required.* Topsoil removal is not required where the pipeline is installed by plowing, jacking, boring, or other methods which do not require the opening of a trench. If provided for in a written agreement with the landowner, topsoil removal is not required if the pipeline can be installed in a trench with a top width of 18 inches or less.

*d. Backfill.* The topsoil shall be replaced so the upper portion of the pipeline excavation and the crowned surface, and the cover layer of the area used for subsoil storage, contain only the topsoil originally removed. The depth of the replaced topsoil shall conform as nearly as possible to the depth removed. Where excavations are made for road, stream, drainage ditch, or other crossings, the original depth of topsoil shall be replaced as nearly as possible.

**9.4(2) Temporary and permanent repair of drain tile.**

*a. Pipeline clearance from drain tile.* Where underground drain tile is encountered, the pipeline shall be installed in such a manner that the permanent tile repair can be installed with at least 12 inches of clearance from the pipeline.

*b. Temporary repair.* The following standards shall be used to determine if temporary repair of agricultural drainage tile lines encountered during pipeline construction is required.

(1) Any underground drain tile damaged, cut, or removed and found to be flowing or which subsequently begins to flow shall be temporarily repaired as soon as practicable, and the repair shall be maintained as necessary to allow for its proper function during construction of the pipeline. The temporary repairs shall be maintained in good condition until permanent repairs are made.

(2) If tile lines are dry and water is not flowing, temporary repairs are not required if the permanent repair is made within ten days of the time the damage occurred.

(3) Temporary repair is not required if the angle between the trench and the tile lines places the tile end points too far apart for temporary repair to be practical.

(4) If temporary repair of the line is not made, the upstream exposed tile line shall not be obstructed but shall nonetheless be screened or otherwise protected to prevent the entry of foreign materials and small animals into the tile line system, and the downstream tile line entrance shall be capped or filtered to prevent entry of mud or foreign material into the line if the water level rises in the trench.

*c. Marking.* Any underground drain tile damaged, cut, or removed shall be marked by placing a highly visible flag in the trench spoil bank directly over or opposite such tile. This marker shall not be removed until the tile has been permanently repaired and the repairs have been approved and accepted by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

*d. Permanent repairs.* Tile disturbed or damaged by pipeline construction shall be repaired to its original or better condition. Permanent repairs shall be completed as soon as is practical after the pipeline is installed in the trench and prior to backfilling of the trench over the tile line. Permanent repair and replacement of damaged drain tile shall be performed in accordance with the following requirements:

(1) All damaged, broken, or cracked tile shall be removed.

(2) Only unobstructed tile shall be used for replacement.

(3) The tile furnished for replacement purposes shall be of a quality, size and flow capacity at least equal to that of the tile being replaced.

(4) Tile shall be replaced so that its original gradient and alignment are restored, except where re-location or rerouting is required for angled crossings. Tile lines at a sharp angle to the trench shall be repaired in the manner shown on Drawing No. IUB PL-1 at the end of this chapter.

(5) The replaced tile shall be firmly supported to prevent loss of gradient or alignment due to soil settlement. The method used shall be comparable to that shown on Drawing No. IUB PL-1 at the end of this chapter.

(6) Before completing permanent tile repairs, all tile lines shall be examined visually, by probing, or by other appropriate means on both sides of the trench within any work area to check for tile that might have been damaged by construction equipment. If tile lines are found to be damaged, they must be repaired to operate as well after construction as before construction began.

*e. Inspection.* Prior to backfilling of the applicable trench area, each permanent tile repair shall be inspected for compliance by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

*f. Backfilling.* The backfill surrounding the permanently repaired drain tile shall be completed at the time of the repair and in a manner that ensures that any further backfilling will not damage or misalign the repaired section of the tile line. The backfill shall be inspected for compliance by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

*g. Subsurface drainage.* Subsequent to pipeline construction and permanent repair, if it becomes apparent the tile line in the area disturbed by construction is not functioning correctly or that the land adjacent to the pipeline is not draining properly, which can reasonably be attributed to the pipeline construction, the pipeline company shall make further repairs or install additional tile as necessary to restore subsurface drainage.

**9.4(3) Removal of rocks and debris from the right-of-way.**

*a. Removal.* The topsoil, when backfilled, and the easement area shall be free of all rock larger than three inches in average diameter not native to the topsoil prior to excavation. Where rocks over three inches in size are present, their size and frequency shall be similar to adjacent soil not disturbed by construction. The top 24 inches of the trench backfill shall not contain rocks in any greater concentration or size than exist in the adjacent natural soils. Consolidated rock removed by blasting or mechanical means shall not be placed in the backfill above the natural bedrock profile or above the frost line. In addition, the pipeline company shall examine areas adjacent to the easement and along access roads and shall remove any large rocks or debris which may have rolled or blown from the right-of-way or fallen from vehicles.

*b. Disposal.* Rock which cannot remain in or be used as backfill shall be disposed of at locations and in a manner mutually satisfactory to the company and the landowner. Soil from which excess rock has been removed may be used for backfill. All debris attributable to the pipeline construction and related activities shall be removed and disposed of properly. For the purposes of this rule, debris shall include spilled oil, grease, fuel, or other petroleum or chemical products. Such products and any contaminated soil shall be removed for proper disposal or treated by appropriate in situ remediation.

**9.4(4) Restoration after soil compaction and rutting.**

*a. Agricultural restoration.* Agricultural land, including off right-of-way access roads traversed by heavy construction equipment that will be removed, shall be deep tilled to alleviate soil compaction upon completion of construction on the property. If the topsoil was removed from the area to be tilled, the tillage shall precede replacement of the topsoil. At least three passes with the deep tillage equipment shall be made. Tillage shall be at least 18 inches deep in land used for crop production and 12 inches deep on other lands and shall be performed under soil moisture conditions which permit effective working of the soil. Upon agreement, this tillage may be performed by the landowners or tenants using their own equipment.

*b. Rutted land restoration.* Rutted land shall be graded and tilled until restored as near as practical to its preconstruction condition. On land from which topsoil was removed, the rutting shall be remedied before the topsoil is replaced.

**9.4(5)** *Restoration of terraces, waterways, and other erosion control structures.* Existing soil conservation practices and structures damaged by the construction of a pipeline shall be restored to the elevation and grade existing prior to the time of pipeline construction. Any drain lines or flow diversion devices impacted by pipeline construction shall be repaired or modified as needed. Soil used to repair embankments intended to retain water shall be well compacted. Disturbed vegetation shall be reestablished, including a cover crop when appropriate. Restoration of terraces shall be in accordance with Drawing No. IUB PL-2 at the end of this chapter. Such restoration shall be inspected for compliance by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

**9.4(6)** *Revegetation of untilled land.*

*a. Crop production.* Agricultural land not in row crop or small grain production at the time of construction, including hay ground and land in conservation or set-aside programs, shall be reseeded, including use of a cover crop when appropriate, following completion of deep tillage and replacement of the topsoil. The seed mix used shall restore the original or a comparable ground cover unless otherwise requested by the landowner. If the land is to be placed in crop production the following year, paragraph "b" below shall apply.

*b. Delayed crop production.* Agricultural land used for row crop or small grain production which will not be planted in that calendar year due to the pipeline construction shall be seeded with an appropriate cover crop following replacement of the topsoil and completion of deep tillage. However, cover crop seeding may be delayed if construction is completed too late in the year for a cover crop to become established and in such instances is not required if the landowner or tenant proposes to till the land the following year. The landowner may request ground cover where the construction is completed too late in the year for a cover crop to become established to prevent soil erosion.

**9.4(7)** *Future installation of drain tile or soil conservation structures.*

*a. Future drain tile.* At locations where the proposed installation of underground drain tile is made known in writing to the company prior to the securing of an easement on the property and has been defined by a qualified technician, the pipeline shall be installed at a depth which will permit proper clearance between the pipeline and the proposed tile installation. The pipeline company shall consult with the landowner concerning the landowner's plans for future drain tile installation.

*b. Future practices and structures.* At locations where the proposed installation of soil conservation practices and structures is made known in writing to the company prior to the securing of an easement on the property and has been defined by a qualified technician, the pipeline shall be installed at a depth which will allow for future installation of such soil conservation practices and structures and retain the integrity of the pipeline. The pipeline company shall consult with the landowner concerning the landowner's plans for future installation of soil conservation practices and structures.

**9.4(8)** *Restoration of land slope and contour.* Upon completion of construction, the slope, contour, grade, and drainage pattern of the disturbed area shall be restored as nearly as possible to its preconstruction condition. However, the trench may be crowned to allow for anticipated settlement of the backfill. Excessive or insufficient settlement of the trench area, which visibly affects land contour or undesirably alters surface drainage, shall be remediated by means such as regrading and, if necessary, import of appropriate fill material. Disturbed areas in which erosion causes formation of rills or channels, or areas of heavy sediment deposition, shall be regraded as needed. On steep slopes, methods such as sediment barriers, slope breakers, or mulching shall be used as necessary to control erosion until vegetation can be reestablished.

**9.4(9)** *Restoration of areas used for field entrances and temporary roads.* Upon completion of construction and land restoration, field entrances or temporary roads built as part of the construction project shall be removed and the land made suitable for return to its previous use. Areas affected shall be regraded as required by subrule 9.4(8) and deep tilled as required by subrule 9.4(4). If by agreement or at landowner request, and subject to any necessary approval by local public road authorities, a field entrance or road is to be left in place, it shall be left in a graded and serviceable condition.

**9.4(10)** *Construction in wet conditions.* Construction in wet soil conditions shall not commence or continue at times when or locations where the passage of heavy construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed, or underground drainage structures may be damaged. To facilitate construction in soft soils, the pipeline company may elect to remove and stockpile the topsoil from the traveled way, install mats or padding, or use other methods acceptable to the county inspector. Topsoil removal, storage, and replacement shall comply with subrule 9.4(1).

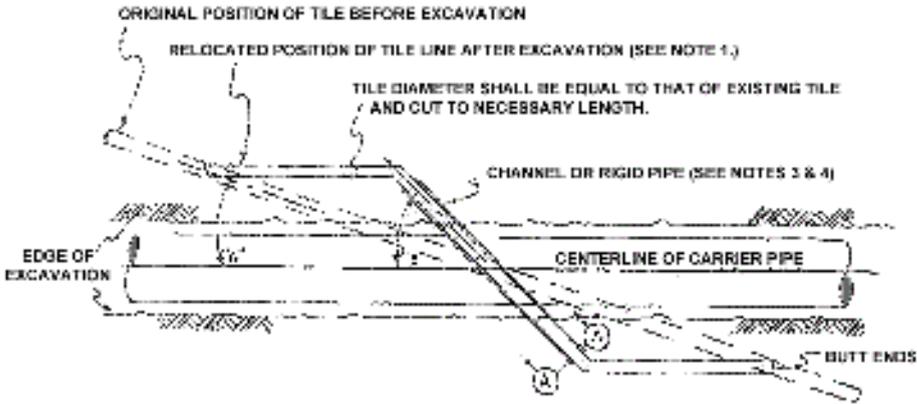
**199—9.5(479,479A,479B) Designation of a pipeline company point of contact for landowner inquiries or claims.** For each pipeline construction project subject to this chapter, the pipeline company shall designate a point of contact for landowner inquiries or claims. The designation shall include the name of an individual to contact and a toll-free telephone number and address through which that person can be reached. This information shall be provided to all landowners of property that will be disturbed by the pipeline project prior to commencement of construction. Any change in the point of contact shall be promptly communicated in writing to landowners. A designated point of contact shall remain available for all landowners for at least one year following completion of construction and for landowners with unresolved damage claims until such time as those claims are settled.

**199—9.6(479,479A,479B) Separate agreements.** This chapter does not preclude the application of provisions for protecting or restoring property that are different from those contained in this chapter, or in a land restoration plan, which are contained in easements or other agreements independently executed by the pipeline company and the landowner. The alternative provision shall not be inconsistent with state law or these rules. The agreement shall be in writing and a copy provided to the county inspector. The pipeline company may request that the county designate a specific person to receive the agreements.

**199—9.7(479,479A,479B) Enforcement.** A pipeline company shall fully cooperate with county inspectors in the performance of their duties under Iowa Code sections 479.29, 479A.14, and 479B.20, including giving proper notice of trenching, permanent tile repair, or backfilling. If the pipeline company or its contractor does not comply with the requirements of Iowa Code section 479.29, 479A.14, or 479B.20, with the land restoration plan, or with an independent agreement on land restoration or line location, the county board of supervisors may petition the utilities board for an order requiring corrective action to be taken or seeking imposition of civil penalties, or both. Upon receipt of a petition from the county board of supervisors, the board will schedule a hearing and such other procedures as appropriate. The county will be responsible for investigation and for prosecution of the case before the board.

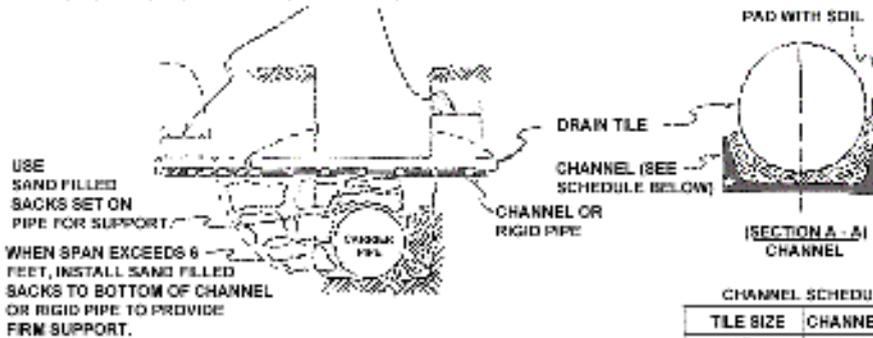
Drawing No. IUB PL-1

### RESTORATION OF DRAIN TILE



(PLAN VIEW)

20" MINIMUM LENGTH OF CHANNEL OR RIGID PIPE SUPPORT ON SOLID SOIL, EACH SIDE OF EXCAVATION.



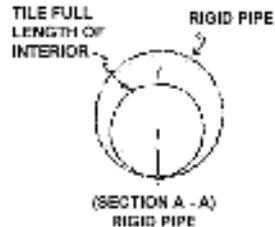
(METHOD OF SUPPORT - - ELEVATION)

CHANNEL SCHEDULE

TILE SIZE	CHANNEL SIZE
3"	4" AT 5.4%
4" - 6"	6" AT 6.7%
6" - 8"	7" AT 8.8%
10" & LARGER	10" AT 16.3%

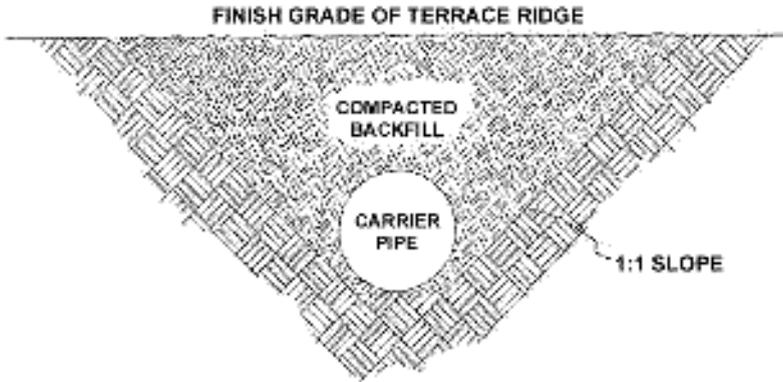
**NOTES:**

1. TILE SHALL BE RELOCATED AS SHOWN WHEN ANGLE "A" BETWEEN PIPELINE AND ORIGINAL TILE IS LESS THAN 20° UNLESS OTHERWISE AGREED TO BY LANDOWNER AND COMPANY.
2. ANGLE "B" SHALL BE 45° FOR USUAL WIDTHS OF TRENCH. FOR EXTRA WIDTHS, IT MAY BE GREATER.
3. DIAMETER OF RIGID PIPE SHALL BE OF ADEQUATE SIZE TO ALLOW FOR THE INSTALLATION OF THE TILE FOR THE FULL LENGTH OF THE RIGID PIPE.
4. OTHER METHODS OF SUPPORTING DRAIN TILE MAY BE USED IF THE ALTERNATE PROPOSED IS EQUIVALENT IN STRENGTH TO THE CHANNEL SECTIONS SHOWN AND IF APPROVED BY THE LANDOWNER.



Drawing No. IUB PL-2

**RESTORATION OF TERRACE**



**NOTE:**

**COMPACTION OF BACKFILL TO BE EQUAL TO THAT OF THE UNDISTURBED ADJACENT SOIL.**

**IUB PL-2**

These rules are intended to implement Iowa Code sections 479.29, 479A.14, and 479B.20.

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**INSTRUCTIONS FOR COUNTY INSPECTORS  
PIPELINE CONSTRUCTION PROJECTS  
STATUTES, RULES AND RESPONSIBILITIES**

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